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POLITICAL SCIENCE QUARTERLY.

FEDERAL CONTROL OF TRUSTS.[1]

RISING prices of many necessaries of life are stimulating a popular demand for federal control of industrial trusts. The pressure of state laws has induced trusts to make a similar demand. Many persons who advocate federal control of trusts believe that the power of these organizations to limit production and raise prices may be thereby destroyed. Trust advocates, on the other hand, see in national incorporation laws a means of escape from state regulation. It is the purpose here to inquire how far the desires of either the trusts or the public can be met, if Congress is induced to act.

Industrial trusts in their present form are simply great corporations, each chartered by a single state, owning land and factories in many states and marketing its products in all the states. The operations of a trust may be divided broadly into two classes,—production or manufacturing and interstate commerce. Between these two classes of operations is the dividing line that separates the field of state regulation from that in which federal authority is well-nigh exclusive. The states may tax, regulate or prohibit the manufacturing operations of foreign corporations within their respective limits, but over interstate commerce the control of Congress is exclusive.

On this condition of facts two questions are presented: first, Has Congress power to prevent the limited production and monopoly prices fixed by trusts? second, Can Congress

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take from the states their power to tax, regulate and prohibit the manufacturing operations of foreign corporations in their respective limits?

I.

The Federal Constitution delegates to Congress the power "to regulate commerce with foreign nations, and among the several states, and with the Indian tribes";[1] "to lay and collect taxes, duties, imposts, and excises";[2] and "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers."[3]

Chief Justice Marshall, in Gibbons *v.* Ogden,[4] speaking of the power of Congress to regulate interstate commerce, said:

> This power, like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the Constitution.

In the past the Supreme Court of the United States has been repeatedly called on to restrain the attempts of individual states to regulate interstate commerce. Several leading and numerous minor cases have decided that states may neither tax, regulate nor prohibit the operations of interstate commerce.[5] This is equally true whether the commerce is carried on by natural persons, by domestic corporations or by foreign corporations.

Until the last quarter of the nineteenth century, the operations of private persons and corporations in any one case were on too small a scale to affect interstate commerce seriously. Before the final decade of the century, however, it grew evident that agreements or combinations of great corporations might prove to be as great restrictions on commerce as any imposed by individual states. Responding to the popular demand for some protection against this new menace to free commercial intercourse, Congress passed the Trust Act[6] of

[1] Article I, 8, 3.
[2] Article I, 8, 1.
[3] Article I, 8, 18.
[4] 9 Wheaton, 1.
[5] Gibbons *v.* Ogden, 9 Wheaton, 1; Brown *v.* Maryland, 12 Wheaton, 413; Robbins *v.* Shelby County Taxing District, 120 U.S. 489.
[6] 26 Statutes at Large, 209.

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1890. The first sentence in this act is this: "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states or with foreign nations, is hereby declared to be illegal." The scope of the act, as indicated by this sentence, is evidently very limited, because only those restraints of trade that result from contracts, combinations or conspiracies are declared illegal. It follows that a restraint of trade, however great, that does not result directly from a contract, combination or conspiracy is not within the prohibition of the act.

An explanation of so limited a scope is found in the means to restrain trade which were in use at the time of the passage of the act. At that time trusts had not generally assumed their present form of great corporations, each owning most or all of the instruments of production in its particular line. The trust of that date represented an agreement or combination of several distinct corporations, made with a view to control production and to fix prices. Congress, therefore, asserted only so much of its power over interstate commerce as seemed necessary to meet the existing situation. Shortly after the passage of the Trust Act, those who desired to establish monopolies found means to evade its prohibitions. Instead of agreements between distinct corporations, new and larger corporations were formed, each to acquire most or all of the plants in a particular line of industry, and the present form of trust was born.

Decisions of the federal courts, in a number of cases brought under the Trust Act, show that this act applies to agreements in restraint of trade, but does not cover such restraint when accomplished by the purchase and ownership of most of the factories in a particular line of industry. This distinction is clearly brought out by a comparison of two cases, United States *v.* E. C. Knight Co.,[1] and Addyston Pipe and Steel Co. *v.* United States.[2]

In the Knight case the defendant corporation, with others, owned four sugar refineries in Philadelphia. The American

[1] 156 U.S. 1. [2] 175 U.S. 211.

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Sugar Refining Company, a corporation of New Jersey, purchased stock of the corporations owning the Philadelphia refineries and thereby established a nearly complete monopoly in the manufacture of refined sugar. The United States brought suit to set aside this transaction, but the Supreme Court declined to interfere, because the sale related to factories for refining sugar, and this is not interstate commerce. The Supreme Court, holding that the Trust Act did not apply to the case, said:

> Congress did not thereby attempt to assert the power to deal with monopoly directly as such; or to limit and restrict the rights of corporations created by the states or the citizens of the states in the acquisition, control or disposition of property.

And again:

> The act of Congress only authorized the circuit courts to proceed by way of preventing and restraining violations of the act in respect of contracts, combinations or conspiracies in restraint of interstate or international trade or commerce.

Evidently the case against the Knight Company failed, not because the monopoly in the manufacture of sugar did not affect interstate commerce, but because the Trust Act does not cover a restraint of commerce obtained through a monopoly in manufacture. The question whether Congress has power to free commerce from the restraint of such a monopoly was not before the court in this case.

In United States *v.* Addyston Pipe and Steel Co. the ample power of Congress to deal with manufacturing and trading monopolies by suitable legislation was well illustrated. The defendants here were six corporations manufacturing cast-iron pipe and selling it in thirty-six states. These corporations entered into an agreement whereby a committee representing all the corporations fixed the lowest price to be made on each job, and the selected company put in a bid at this price, while the other companies put in higher bids to give the appearance of competition. The United States brought suit under the Trust Act to restrain action under this agreement, and the

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Supreme Court enjoined the defendants as to that part of the agreement relating to interstate commerce. The court said:

> If, therefore, an agreement or combination directly restrains not alone the manufacture, but the purchase, sale or exchange of the manufactured commodity among the several states, it is brought within the provisions of the statute.

It was contended on the part of the defendants that the power of Congress over interstate commerce did not extend to private contracts, but only to legislation by the several states; also that the application of the Trust Act to this case would take away the liberty of contract without due process of law, in violation of the Fifth Amendment to the Constitution. In answer to this the court said:

> The private contracts may in truth be as far-reaching in their effect upon interstate commerce as would the legislation of a single state of the same character. . . . We conclude that the plain language of the grant to Congress of power to regulate commerce among the several states includes power to legislate upon the subject of those contracts in respect to interstate or foreign commerce which directly affect and regulate that commerce, and we can find no reasonable ground for asserting that the constitutional provision as to the liberty of the individual limits the extent of that power.

So far as the Trust Act of 1890 is concerned, great corporations are free to monopolize the production of the necessaries of life and fix prices at any points they desire, if each trust first purchases all the plants in its particular line. Under that act six corporations may not create a monopoly by agreement and thereby restrain interstate commerce, but one may do so by the purchase of the six plants.

The reasoning of the court in the Addyston case points plainly to the conclusion that Congress has, under the authority to regulate interstate commerce, ample power to destroy a monopoly like that in the Knight case. The power over interstate commerce must extend to things which restrain commerce, or it is of little avail. But monopoly of the necessaries of life, with prices fixed at the will of the monopolist, does restrain commerce, whether the monopolist is a single

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corporation or a combination of corporations. The paramount power of Congress is over the commerce directly, and over the combination or corporation that restrains commerce, incidentally. Said the court in the Addyston case: "The question is as to the effect of such combination upon the trade in the article, and if that effect be to destroy competition and thus advance the price, the combination is one in restraint of trade." Monopoly in the hands of one corporation is certainly as effective to restrain commerce as monopoly by the agreement of many corporations.

It should be evident, therefore, that the Trust Act marks merely the beginning and not the end of federal power over corporate monopolies. In that act Congress merely asserted its authority over a particular form of restraint on interstate commerce, namely the agreement, combination and conspiracy, and that form had to give way. The probable result, when Congress extends its prohibition to monopolies attained by other means, may be determined from the constitution and cases apart from the Trust Act.

Congressional control of individual corporations chartered by the states is not a new exercise of federal power. Ever since the Civil War the United States has maintained an extensive system of excise taxes on the manufacture of liquors, tobacco and some other goods. Manufactures of this sort have long been mostly in the hands of private corporations. As said by Chief Justice Marshall, "The power to tax involves the power to destroy";[1] hence corporations engaged in these lines of manufacture are not only regulated, but might be destroyed by the taxes imposed by Congress. Nevertheless, such taxes have never been declared unconstitutional by the Supreme Court during the forty years of their extensive application. Excise taxes have not been laid with equal weight on all persons or corporations engaged in a given line of industry, but have been distributed among different classes of producers according to the views of expediency entertained by Congress.

[1] McCulloch *v.* Maryland, 4 Wheaton, 316.

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Examples of the discretion exercised in the application of these taxes exist in the War Revenue Act of 1898. All manufacturers of tobacco whose annual sales are more than one hundred thousand pounds are required to pay twenty-four dollars by this act, but where the annual sales are fifty thousand pounds the tax is only six dollars. Banks in general are by the act subject to a tax varying according to their capital, but a certain class of savings banks is entirely exempt. A general tax is laid on insurance policies, but certain insurance companies are excused from its payment. The act requires every person or corporation engaged in refining sugar or petroleum to pay a tax of one-quarter of one per cent on gross annual receipts above two hundred and fifty thousand dollars, but concerns with annual receipts of less than this amount pay nothing. All sales of goods made at exchanges or boards of trade are taxed according to the amount involved, but no tax is laid on sales in general. These examples, which do not differ in kind from previous excise taxes, afford ample precedent for taxation of a character that would regulate the trusts.

Most excise taxes have been based solely on the general taxing power of Congress. Where Congress employs taxation to aid in the execution of some other power delegated to it, a double support exists for the constitutionality of the legislation.

Such use of the taxing power was made in the act[1] of July 13, 1866, by which Congress imposed a tax of ten per cent on the note issues of state banks. The object and effect of this tax was to destroy the power of the state banks to issue notes, so that national bank notes might come into general use. Under this act the notes of state banks quickly went out of circulation, because there was no profit in their issue. Congress is empowered by the constitution "to coin money, regulate the value thereof, and of foreign coin," and "to borrow money." By virtue of these powers Congress had provided for the issue of national bank notes, but the circulation of these notes was impeded by the issues of state banks. Here was

[1] 12 Statutes, 670.

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a clash between private corporations and a federal power. Congress, with authority to make all laws necessary to carry into effect its express powers, applied taxation to the state banks, and they disappeared from the field.

To control trusts Congress has only to apply taxation on the lines established as to note issues of state banks and in the excise laws. When a suitable tax is applied to production under the conditions that characterize industrial monopolies, the trusts will disappear, and the normal forces of competition will again regulate manufacturing operations.

To apply taxation most effectively, the distinctive features of industrial trusts must be singled out, and the burden laid on them alone. In this way the smaller corporations and individual manufacturers will escape the tax and regain their local markets. A distinctive feature of the industrial trust is the ownership of manufacturing plants of the same sort in more than one state. In almost every case a trust has obtained its monopoly through the purchase, in few or many states, of factories that were formerly operated by independent producers. It is mainly by control of these widely separated properties that a trust is able to limit production and fix monopoly prices. A suitable tax, say ten per cent of gross income or a fixed sum per unit of products, laid by Congress on every corporation or other manufacturer owning or controlling factories of the same sort in more than one state, would destroy the monopoly powers of trusts, just as a like tax destroyed the note issues of state banks. The obvious result of such a tax would be to bring the dozens and scores of factories, formerly independent but now controlled by trusts, into the hands of separate corporations or persons.

Should it appear that monopoly in the more important lines of manufacture can be maintained by production on a very large scale in a single state, which is not the present practice of trusts, Congress may lay its taxes on the products or on the gross income of each corporation or manufacturer in a particular line, in so far as that production or income exceeds a certain annual sum.

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In spite of the forty years of experience with federal excise taxes, including the tax on the notes of state banks, it will be contended that the proposed taxes on trusts are unconstitutional. We must, therefore, turn to the adjudications of the Supreme Court of the United States to silence these objections.

The constitution lays two restrictions on the taxing power of Congress that are important here. "All duties, imposts and excises shall be uniform throughout the United States";[1] and every capitation or other direct tax shall be apportioned among the states according to population.[2] If the proposed tax on trusts is a direct tax, it would not be permissible, because it would not be laid in proportion to population. But this tax is not direct, as will be shown. On the other hand, as an indirect tax it must be uniform; and in fact it would have that degree of uniformity which is required by the constitution, because it would be laid on all corporations or manufacturers in like circumstances or enjoying similar privileges.

In Veazie Bank *v.* Fenno[3] the tax of ten per cent imposed by Congress on the notes of state banks was contested as unconstitutional. It was objected that this tax was direct and yet was not in proportion to population; but the Supreme Court said it was an indirect tax, like duties and excises. Again, it was said that the tax was on a franchise granted by the state; but the court, while not denying the right of Congress to tax such a franchise, held that the tax in question was laid on property created or contracts made by the bank. Lastly it was argued for the bank that the tax was excessive and was intended to destroy the power of note issue. The answer of the court was that all questions as to the amount of the tax were exclusively for Congress.

Referring to the purpose of the tax, the court further said:

> Having thus, in the exercise of undisputed constitutional powers, undertaken to provide a currency for the whole country, it cannot be questioned that Congress may, constitutionally, secure the benefit of it to the people by appropriate legislation. Viewed in this light, as

[1] Article I, 8, 1. [2] Article I, 9, 4. [3] 8 Wall. 533.

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well as in the other light of a duty on contracts or property, we cannot doubt the constitutionality of the tax under consideration.

The case just considered, decided in 1869, was affirmed in National Bank *v.* United States,[1] ten years later.

A tax laid by Congress on the incomes of insurance companies was contested in Pacific Insurance Company *v.* Soule,[2] decided by the Supreme Court in 1868. The court held the tax to be indirect and constitutional. During the following year, in Paul *v.* Virginia,[3] the court decided that the insurance business is no part of interstate commerce, so that the tax on incomes of insurance companies must rest entirely on the taxing power of Congress.

The tax imposed by Congress, in the War Revenue Act of 1898, on sales made at exchanges or boards of trade came before the Supreme Court in the case of Nicol *v.* Ames.[4] Replying to the contention that the tax was direct and yet not apportioned according to population, the court said that the tax was an excise laid upon the privilege offered at boards of trade, and was indirect. To the further contention that the tax, though indirect, was not uniform, the reply of the court was:

> In this case there is that uniformity which the constitution requires. The tax or duty is uniform throughout the United States, and it is uniform or, in other words, equal, upon all who avail themselves of the privileges or facilities offered at the exchanges; and it is not necessary, in order to be uniform, that the tax should be levied upon all who make sales of the same kind of things, whether at an exchange or elsewhere.

These decisions all show that Congress has power to lay the proposed taxes on trusts. If the incomes of insurance companies can be taxed, so can the incomes of manufacturers. If sales made at exchanges can be singled out and made the objects of a special excise tax, Congress may exercise an equal discretion as to the incomes or products of corporations that own or control plants of a given sort in more than one state.

[1] 101 U.S. 1.
[2] 7 Wall. 434.
[3] 8 Wall. 168.
[4] 173 U.S. 509.

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If Congress may destroy the note issues of state banks by taxation, to prevent their competition with a national currency, a federal tax may be laid on the products of trusts to lift from interstate commerce the burden of monopoly price.

Having considered the arguments which show that Congress can control the trusts, we may glance at the impossible conclusions to which the opposite view must lead. Exclusive and paramount power over interstate commerce has been surrendered by the several states to Congress, so that no state can exclude the trading operations of a trust that any other state will incorporate. If Congress cannot control trusts so as to prevent monopoly, then paramount power over interstate commerce is in the trusts and not in Congress, where the constitution says it shall be. If the commercial operations of trusts are beyond the reach of the federal government, as well as beyond the power of the states into which the trusts go, then one or several states may, by bargains with corporations of their own creation, retake from Congress that control over interstate commerce which all the states have yielded up.

II.

Now comes the second question in the present inquiry. Can industrial trusts, by means of corporate charters granted by Congress, escape such powers as still remain in the several states to tax, regulate and exclude? The desire of trusts to escape through federal incorporation the exercise of these powers is squarely presented by Mr. James B. Dill in the *Yale Law Journal* for April, 1902. The writer there says:

> National corporations should be assured of the privileges and immunities guaranteed to natural persons by the Constitution of the United States, and discrimination against them by state laws forbidden. . . . Its stock [referring to a national corporation] in the hands of stockholders might be exempted from taxation of every nature.

Congress in the exercise of its express powers may charter corporations to carry these powers into effect. In this way banking, railway, telegraph, bridge and canal companies have

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received federal charters. Such corporations are exempt from state taxation and regulation, in so far as these would impede the execution of the powers of Congress. Another class of corporations, organized merely for private business, and destitute of any agency to execute the powers of Congress, have also received federal charters. Included in this class are insurance companies,[1] and a savings and trust company.[2]

When considering the powers of states over this second class of federal corporations, the nature of a corporate charter should be held clearly in mind. Such a charter is merely a legal license to one or more persons to act in a certain way. In Paul *v.* Virginia[3] the Supreme Court said:

> Now a grant of corporate existence is a grant of special privileges to the corporators, enabling them to act for certain designated purposes as a single individual, and exempting them (unless otherwise specially provided) from individual liability.

These special privileges can be exercised only where the law granting them can be enforced. The constitution provides that "the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states."[4] In the case just named it was contended that a law of Virginia, discriminating against insurance companies chartered by other states, was in conflict with this clause of the Federal Constitution. Replying to this contention, the Supreme Court said:

> The privileges and immunities secured to citizens of each state in the several states, by the provision in question, are those privileges and immunities which are common to the citizens in the latter states under their constitution and laws by virtue of their being citizens. Special privileges enjoyed by citizens in their own states are not secured in other states by this provision. It is not intended by the provision to give to the laws of one state any operation in other states. They can have no such operation, except by permission, express or implied, of those states. The special privileges which they confer must, therefore, be enjoyed at home, unless the assent of other states to their enjoyment therein be given.

The Virginia law was therefore held to be constitutional.

[1] 13 Statutes, 428; 27 Statutes, 29.
[2] 13 Statutes, 510.
[3] 8 Wall. 168.
[4] Article IV, 2, 1.

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Can trusts chartered by Congress to carry on the manufacture and sale of commodities escape the operation of state laws to any greater extent than corporations chartered by any state? Either a state corporation or a federal corporation is free to engage in interstate commerce in any state, because control of this commerce is in Congress. But, as said by the court in the Knight case, "Commerce succeeds to manufacture and is not a part of it." Manufacturing and trading corporations chartered by any state are subject to the control of any states to which they go, as to manufacturing and all other operations save interstate commerce. If industrial trusts chartered by Congress are to escape regulation by the states, it can only be on the ground that such regulation would impede the execution of federal powers. But manufacturing and trading corporations execute no federal powers, because their operations do not involve the exercise of any such powers. Manufacturing and trading in commodities are not the exercise of either state or federal power, though states may control one set of these operations and Congress the other. If it is exercising federal power to engage in interstate commerce, then millions of private persons exercise this power daily. State corporations as well as private persons are now engaged in interstate commerce; will it be contended that Congress may remove these corporations and persons from the control of state laws in all matters because the regulation of interstate commerce is a federal power? How then is a trust with a charter from Congress to escape the operation of state laws? A federal charter or license or special privilege is not alone sufficient to protect a corporation from the laws of the states where it operates. To render such laws invalid, they must conflict with the powers of Congress. Speaking of state laws that obstruct the exercise of powers vested in the general government, the Supreme Court, in Railroad Company *v.* Peniston,[1] said: "The implied inhibition, if any exists, is against such obstruction, and that must be the same whether the corporation whose property is taxed was created by Congress or by a state legislature."

[1] 18 Wall. 5.

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It has been uniformly held by the Supreme Court that a license or special privilege granted by Congress is no protection from state laws in matters reserved to the states. In the License Tax Cases it was contended that licenses[1] from Congress to sell lottery tickets or to retail liquors gave authority to do so in states where the local laws prohibited these operations. The court pointed out that Congress, having power to regulate interstate commerce, might grant coasting and other licenses, and then continued:

> All such licenses confer authority and give rights to the licensee. But very different considerations apply to the internal commerce or domestic trade of the states. Over this commerce and trade Congress has no power of regulation nor any direct control. This power belongs exclusively to the states. . . . Congress cannot authorize a trade or business within a state in order to tax it.

As Congress lacks the power to authorize the sale within a state of liquors at retail or of lottery tickets, it is hard to see how a federal charter will free the manufacturing operations of a trust from the burdens of a state law.

A patent right is a special privilege granted by Congress to inventors in the exclusive sale of their discoveries. Such a license cannot be acted on in a state where the sale of the patented article is prohibited by local law as unfit or unsafe for use. This was the decision of the United States Supreme Court in Patterson *v.* Kentucky,[2] where a state law prohibiting the sale of a patented illuminating oil was upheld.

Another instance of the inability of Congress to confer special privileges in matters subject to state laws exists in the Trade-Mark Cases.[3] Congress provided for the registration of trade-marks in the Patent Office, and granted a right of action for the wrongful use of registered trade-marks by an act[4] of July 8, 1870. The wording of the act was so broad that it included all wrongful use of registered trade-marks, whether in foreign or interstate commerce or in commerce confined to a single state. In the Trade-Mark Cases this act was contested

[1] 5 Wall. 462.
[2] 97 U.S. 501.
[3] 100 U.S. 82.
[4] 16 Statutes, 198.

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on the ground that Congress has no power to regulate trade confined to a single state. After pointing out the authority of Congress over interstate and foreign commerce, the Supreme Court said: "There still remains a very large amount of commerce, perhaps the largest, which, being trade or traffic between citizens of the same state, is beyond the control of Congress." Because the act assumed to regulate trade within any one state, it was unconstitutional and void. This decision clearly shows that a charter, license or special privilege granted by Congress for the particular benefit of an individual or corporation, and not to execute any express federal power, cannot prevent the operation of state laws.

The power to grant corporate charters is nowhere delegated to Congress in express terms by the constitution. When such charters are used as a means to execute the authority clearly delegated to the general government, they are beyond state regulation. When a bank issues notes to circulate as money, as when a railway transports freight or passengers, from state to state, federal powers are clearly executed, because the value of money is regulated in the one case, and interstate commerce in the other. But when a natural person or a corporation uses a piece of lawful money to make a payment, or delivers a box of freight for transportation from one state to another, such a person or corporation does not exercise a federal power. These acts are subject to federal power but are not of its essence.

Apart from the execution of federal power, a corporate charter granted by Congress can claim no more exemption from the law of a state where it is employed than can a similar charter from another state. Will it be claimed that the insurance company chartered by Congress, as noted above, can escape the regulation of states where it may do business, in spite of the decision in Paul *v.* Virginia[1]? Such a conclusion can hardly be reached; for the Supreme Court in that case based its decision, previously stated, on the ground that a foreign corporation can claim no rights not granted to it in a state to which it goes. A corporation chartered by Congress

[1] 8 Wall. 168.

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would be a foreign corporation in every state, though not in the District of Columbia. If a federal charter is all that is necessary in order to escape state regulation, the great insurance companies would have obtained such charters long ago and avoided control by individual states.

If a license from Congress to retail liquors or sell lottery tickets gives no authority to do these things against the law of any state, a trust cannot, by means of a federal charter, escape regulation and special taxation in states where it does business. If a patent right granted by Congress cannot be exercised in defiance of state law, neither can a foreign federal corporation avoid such conditions as may be imposed on its operations within any one state. If Congress cannot control the domestic business of a state by means of trade-marks, whence comes its power to do so by corporate charters? If an insurance company chartered by Congress may be specially taxed in or excluded from any state, how is a federal trust to escape state taxation and regulation as to local operations? Until answers are found for these questions, federal charters will not relieve trusts from the operation of state laws.

It may be suggested that an amendment to the Constitution would take away such powers as the states now have over trusts. To the consolation of this suggestion the trusts are fully entitled. In the meantime the states will be in no hurry to surrender the remnant of their powers to a Congress that has neglected to protect the public from the exactions of monopoly price.

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THE NOMINATION AND ELECTION OF DELEGATES FROM NEW YORK TO THE FIRST CONTINENTAL CONGRESS, 1774.[1]

THE experience of the United States teaches that representative self-government is conditioned by the existence of political parties, and that the prime motive of these parties inevitably tends to become not the advancement of truth, but the wielding of power. Consequently the prime necessity of a party is not intellectual disinterestedness, but machinery — an organization which can concentrate the entire party strength at a single point and make it effective. With rare and temporary exceptions party principles will be subordinated to party machinery — will be moulded, that is, in conformity with the necessity of concentrating the entire party strength at a single point. Principles which are most adapted to this end are such as can be easily grasped in themselves, and, more especially, easily distinguished from those of other parties. Principles which are based upon the notion of the golden mean, policies which attempt to steer a middle course, are of slight value for political parties. In the solution of momentous questions, the party which attempts to stand for compromise, for reconciliation, is likely to disappear; the party which seeks truth rather than power will suffer disintegration from the very necessity of supporting the lesser against the greater error.

The framers of the constitution did not see this at all clearly, and they made almost no provision for it in the constitution. That they did not see it clearly is usually regarded as quite natural; for the nominating convention, which is scarcely more than a commentary on this fundamental tendency of party development, is usually thought of as an institution which, even in origin, does not antedate the constitutional

[1] See the *American Historical Review* for October, 1901.

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convention of 1789. This is not true. The beginnings of the nominating convention run far back into the colonial period, and the framers of the constitution had before their eyes an abundance of examples illustrating the very tendencies which have become so prominent in modern party development. The most striking example, perhaps, was furnished by New York in the factional activity which centered about the election of delegates to the Continental Congress. The rise of party organization, in this connection, is thus worthy of special consideration, not only because it embodied certain valuable experience which the constitutional convention failed in some measure to take advantage of, but also because it will serve to fix attention upon that period in our history in which the origin of the nominating convention must be sought.

From the middle of the eighteenth century the dominant aristocratic spirit in New York came increasingly in conflict with the rising democratic spirit. Gradually the sources of authority were being transferred from the narrow upper ranges of society to the broader lower ranges. The Revolution hastened, and for the moment completed, this movement by giving a strong impetus to the democratic spirit and by breaking up and destroying the court aristocracy. Gradually the legal royal government itself was replaced by an extra-legal popular organization. As the field was thus cleared for a trial of representative self-government, the popular party, which had been very nearly a unit in the time of the Stamp Act troubles, began to separate into factions. In spite of the importance of the questions involved, perhaps because of this importance, these factions sought for machinery quite as earnestly, and cared for intellectual disinterestedness quite as little, as parties have since done. By 1774 the popular party, although it had developed but one organization, had divided into two factions, the separation of which was measurably complete. There were, on the one hand, the conservatives, who were attempting to direct resistance along lines of compromise and conciliation; they favored partial non-intercourse and negotiation. There were, on the other hand, the radicals, who were attempting

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to carry resistance to the very edge of revolution; they favored absolute non-intercourse and mob violence. Potentially there was a third party — the loyalists. From the early months of 1774 the progress of events in America and England tended steadily to define the issue more and more precisely in terms of revolution and loyalism. But the conservative faction in New York attempted to steer a clear course between the two — attempted to avoid the Scylla of absolute revolution on the one hand, and the Charybdis of submissive loyalism on the other. It attempted to do this by gaining control of the popular organization and dictating, through this organization, the election of delegates to the first Continental Congress, and by opposing the efforts of the radical organization to control, through a provincial convention, the election of delegates to the second Continental Congress. The significance of the period consists in the practical failure of the conservative program, and in the ultimate disintegration of the conservative faction.

The present paper will attempt to deal with conservative activity in respect to the contest for the delegates to the first Continental Congress. There were three phases of this contest: (1) the control of the popular organization which the conservatives gained in the election of the Committee of Fifty-One; (2) the attempt of the conservatives to dictate, through this committee, the election of delegates, and the consequent formation of an opposing radical organization with its own candidates and its own platform; and (3) the effort of the conservatives to secure support in the rural districts by extending their organization to the other counties in the province.

1. *The Committee of Fifty-One.* — The crude and ill-defined organization of the earlier committees through which the party of opposition expressed itself, gave rise to frequent changes in their composition. As such committees were elected for no definite period, and were of course tolerated at all only because of their close sympathy with those whom they were supposed to represent, any new development in the struggle with the

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home government was almost sure to lead to new meetings and new committees. In other words, the committee was not at first in any true sense a representative body; it was an agent merely, appointed for the purpose of expressing the general will — or what passed for the general will — with reference to a specific matter. It is therefore not a fact for special comment that the arrival of the Boston Port Act was considered as calling imperatively for the appointment of a new committee. That the old committee might serve to act for the city in the new matter as it had in the old does not appear indeed to have been suggested.

It is difficult nevertheless to determine with precision just who took the initiative in bringing about the desired result. The Boston Port Act reached New York, from England direct, on Thursday, May 12.[1] Within the next two days the act was reprinted and circulated about the city in the form of a handbill,[2] and a notice was posted at the coffee house inviting the merchants to meet at the "home of Mr. Samuel Fraunces, on Monday evening, May 16."[3] By whom this notice was posted there is no conclusive proof. It was addressed to the merchants only; on its face, therefore, it bears the mark of the conservative faction. But in view of the fact that the radicals entered the meeting on Monday with a ticket already prepared, they may have called the merchants together for the purpose of giving to their committee the appearance of a wider popular support. On the other hand, in the light of the sequel, it may equally well be conjectured that the conservatives called the

[1] *Boston Gazette*, May 23, 1774. *Cf.* 4 American Archives, I, 289, note.

[2] It appears to have been printed twice, indeed. A handbill was circulated on Saturday, containing the act and some letters dated London, April 7 and 8. 4 American Archives, I, 289, note. Another handbill which contains merely the act itself, headed "The Alarming Boston Port Act," *etc.*, has been preserved. Broadsides, I. (The broadsides used in this paper are from the collection in the library of the New York Historical Society. They are in three volumes but unpaged. The numbers refer to the volumes. I am indebted to the kindness of Mr. Robert Kelby for the use of them.)

[3] Minutes of the Committee of Fifty-One, 4 American Archives, I, 294. (The Minutes of the Fifty-One are printed in the Archives, pp. 293–330. For convenience they will be cited as Minutes of the Committee, with the pagination of the Archives.)

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meeting for the purpose of doing just what they did ultimately do — of incorporating, namely, the principal radical leaders in a committee composed mainly of conservatives.

However this may be, there is less difficulty in determining what occurred at the meeting on Monday evening, though it is not clear whether it was held at Fraunces' Tavern, as advertised, or at the Exchange in the Broadway.[1] That the mechanics, the radicals, were present as well as the merchants, the conservatives, is clear enough, not only from contemporary notices, but also from the character of the meeting itself; the central point of interest, indeed, was the conflict of the two factions over the composition of the new committee. The conservatives appear to have had a majority. Isaac Low was made chairman, and it was agreed, probably without opposition, that a new committee should be nominated that evening, to be confirmed at a future meeting called for that purpose. The radicals then proposed that the committee should be limited to twenty-five, and presented a ticket which they had already prepared at an earlier meeting.[2] To oppose this ticket, composed as it was of representatives of both factions, would put the conservatives in a bad light; to accept it without modification would place the movement in the hands of the radicals. The conservatives very shrewdly refused to do either; they accepted the ticket substantially, but rejected the plan of limiting the committee to twenty-five. To the radical ticket of twenty-five the conservatives consequently opposed a ticket of fifty, consisting of twenty-three members of the radical slate, and twenty-seven others. When the question was put, "Whether the committee of fifty be appointed, or twenty-five?" it was carried for the fifty.[3]

[1] The meeting was called to meet at Fraunces' Long Room. The Minutes of the Committee state that certain persons "did accordingly appear at the time and place appointed, and then and there," *etc.* Minutes of the Committee, 294. On the other hand, what was apparently the official report of the meeting appeared in a handbill headed, "At a meeting at the Exchange, 16 May, 1774," *etc.* Broadsides, I. *Cf. New York Mercury*, May 23, 1774. 4 American Archives, I, 299, note.

[2] Broadsides, I.

[3] Broadsides, I. For further accounts of this meeting, *cf.* 4 American Archives, I, 293, note, 299, note. Minutes of the Committee, 294. Leake, Life and Times

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The committee thus nominated had yet to receive the "approbation of the public"; that is, it had, in some manner, to be elected. But if the work of the conservatives was thus not fully accomplished, the radicals had at least been disarmed. Since twenty-three of the candidates were of their own choosing, they could not well oppose the election of the fifty without laying themselves open to the charge of acting from interested motives. The fifty might, with more truth than was ordinarily the case, be considered as representing the will of the people; and it was precisely as representing the will of the people that the radicals had always claimed authority for the actions of their own committees. The conservatives quickly followed up the advantage they had thus gained. On Tuesday handbills were circulated which announced that in order to observe all the necessary formalities for constituting "a committee duly chosen," a second meeting would be held at the coffee house on Thursday, May 19, at one o'clock. Not the merchants merely, but "the inhabitants of the city and county," were requested to attend for the purpose of approving "of the committee nominated," or of appointing "such other persons as in their discretion and wisdom may seem meet."[1] Yet, as if to deprecate as far as possible any tendency to act upon this last suggestion, a second handbill was circulated a few hours before the time appointed for the meeting, setting forth the wisdom and discretion of supporting those who had been nominated in a more or less legitimate way.[2] Whatever may have been the result of this appeal, at one o'clock "a great concourse of the inhabitants" met at the coffee house. As before, both parties were present. They may very likely have appeared, as Bancroft says, "in array; on the one side men of property, on the other tradesmen and mechanics"; but it is questionable whether the mass of the people were ready to "found a new social order."[3] The men of property seem rather to have

of General Lamb, 87. Lamb, History of the City of New York, I, 169. Dawson, The Park and its Vicinity, 57; and Westchester County, *etc.*, 7.

[1] Minutes of the Committee, 294. [2] 4 American Archives, I, 293, note.

[3] Bancroft, History of the United States (final ed.), IV, 10. These phrases of Bancroft are probably based upon the letter from Gouverneur Morris to Mr. Penn,

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been in the majority; in any case they again named Isaac Low chairman, who presently made a speech in which there was little hint of a new social order. Men were urged to act according to the "dictates of calm reason only," and to set aside "all little party distinctions, feuds and animosities." [1] The names of the fifty were then proposed, and confirmed by the meeting, "and Mr. Francis Lewis was added to the latter by unanimous consent." [2]

That the Committee of Fifty-One, nominated and elected in this manner, represented a victory for conservative ideas is clear enough: the movement from first to last was in the hands of conservative leaders, while the committee, as finally composed, included only twenty-four of the slate prepared at the radical caucus, with twenty-seven added by the merchants. But the majority, thus numerically stated, fails in a signal manner to express the real force with which the committee was to stand for moderation and conservatism, not to say hesitation. Possible though it is to speak broadly of the two factions of merchant and mechanic, of conservative and radical, it is yet necessary to remember that by no means was there perfect homogeneity within these two factions. Of the twenty-four members taken from the committee nominated by the mechanics, not all were radical Sons of Liberty like Isaac Sears or Alexander MacDougall; [3] of the remaining twenty-seven members, not all certainly were ready, like Peter Van

May 20, 1774: "Yesterday I was present at a grand division of the city, and there . . . my fellow citizens . . . fairly contended about the future forms of our government, whether it should be founded upon aristocratic or democratic principles. I stood in the balcony, and on my right hand were ranged all the people of property, with some few poor dependents, and on the other all the tradesmen, who thought it worth their while to leave daily labor for the good of the country." 4 American Archives, I, 342. *Cf. New York Mercury*, May 23, 1774.

[1] Minutes of the Committee, 294, 295. *New York Mercury*, May 23, 1774.

[2] Minutes of the Committee, 295. "And Francis Lewis added Nem. Con." *New York Mercury*, May 23, 1774. Lewis was prominent among the Sons of Liberty and was one of the twenty-five originally named by the radicals.

[3] Indeed, the twenty-five was not formed with any intention of having it represent a single faction on a larger committee. It was nominated, according to the account given, by some "merchants, and the body of mechanics of this city." Broadsides, I. It was composed partly of conservatives probably for the same reason that the Fifty-One was composed partly of radicals.

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Schaick, to stand for the king in the face of steady and unrelieved persecution, when the appeal to arms finally came. These were the two extremes: there were perhaps eleven men in the committee who might be classed with Sears and MacDougall;[1] nearly twice that number remained loyal to the king.[2] Between these extremes stood the remaining members of the committee: unlike those who ultimately became royalist, they were ready for forcible resistance when no other alternative presented itself; unlike the Sons of Liberty, they believed that negotiation was still in order, and in any case that mob violence was useless. The middle group was indeed going in the same direction as the Sons of Liberty, but for various reasons it was going more slowly; on the other hand, the cleavage between it and the royalist faction had not yet appeared. The result was that for the moment the extreme radicals were left to themselves, the moderates worked in hearty sympathy with those who ultimately became royalists, and consequently the great majority of the Fifty-One was ready to resist at every point the policy and the methods which had distinguished popular resistance in New York since the Stamp Act riots of 1765.[3]

[1] The radical element in the committee can best be measured perhaps by referring to the secession of July 8, when eleven members published a formal resignation. All but two had been members of the twenty-five. Minutes of the Committee, 314.

[2] Bancroft gives the number as one-third of the committee. — History of the United States, IV, 9, 10. Sabine mentions only twelve. But Flick states (Loyalism in New York, 22, note 4) that "no less than twenty-one members of the Committee later became avowed loyalists." Apparently, however, he includes in this estimate such men as John Alsop, who, it appears, merely retired to Connecticut without taking any part in the contest after 1776, and Wm. Walton, Jr., who wished to remain neutral because his family was divided. He also includes John Delancey, who is not mentioned by Sabine with the other De Lanceys. Even James Duane is made out a loyalist (p. 34, note). Duane was a conservative certainly, but it is too much to call a man a loyalist who was a member of both Continental Congresses, of the New York Provincial Congress and of the Committee of Safety; who helped to draw up the association in New York after the battle of Lexington; and who served on the committee for drafting the State Constitution in 1777. *Cf.* Memoir of James Duane, Documentary History of New York (ed. 1851), IV, 641. Even with a liberal construction of the term, it seems difficult to make out more than nineteen loyalists in the Fifty-One.

[3] *Cf.* Roberts, New York, II, 391. The middle group sided at this time with the royalist element for a variety of reasons other than that of the similarity

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Such was the Committee of Fifty-One. It is necessary now to see how this committee, containing the germs of discord in its very formation, fared in its effort to direct the anti-British movement by controlling the nomination and election of delegates to the first Continental Congress.

2. *Delegates from the City and County of New York.* — The committee met for the first time on Monday, May 23. An organization was effected by the election of Isaac Low as chairman and John Alsop as deputy chairman.[1] A sub-committee was immediately appointed to answer an important letter from Boston which stated that the Port Act had been met in that city by resolutions of complete non-intercourse, and requested the support of New York in the passage of a similar measure. The merchants of New York, however, had already voted down complete non-intercourse, and had declared for the non-importation of such commodities only as were now or might in the future be taxed by the English government.[2] But such a policy, while it might be serviceable in resistance to taxation, was scarcely applicable to the situation in which the Port Act would place Boston on the first of June. The question which

of view relative to the struggle with the home government. Philip Livingston was one who "seems to dread New England, the levelling spirit," *etc.* — Works of John Adams, II, 351. "Mr. McDougall gave a caution to avoid every expression here which looked like an allusion to the last appeal. He says there is a powerful party here who are intimidated by fear of a civil war . . . another party, he says, are intimidated lest the levelling spirit of New England should propagate itself into New York. Another party are prompted by Episcopalian prejudice against New England. Another party are merchants largely concerned in navigation, and therefore afraid of non-importation . . . agreements. Another party are those who are looking up to government for favors." — *Ibid.*, 350. *Cf.* Flick, Loyalism in New York, 30, 31.

[1] Minutes of the Committee, 295. Duane, Jay and Van Schaick were appointed a committee to draw up a set of rules for the regulation of the committee's procedure. One week later, May 30, rules were reported and adopted. Among others were rules providing that the secretary should not be a member of the committee; that no question once determined by a majority should be reconsidered except with the consent of a majority; that the committee should meet on adjournment and if special meetings were called a printed notice must be left at each member's house; that the meetings were to be secret, free access to the records being granted to the public only in the presence of a member; and that absences should be punished by fines. *Ibid.*, 298, 299.

[2] *Cf. American Historical Review*, VII, 70.

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now faced the conservatives was consequently a serious one. Of three possible answers, one must be returned: to refuse the request of Massachusetts and maintain the conservative policy of modified non-intercourse; to grant the request of Massachusetts and identify themselves with the radicals; or to suggest some new method of procedure. The Port Act had aroused popular sympathy to such an extent as to make the first impracticable for the moment, even had the committee itself wished to leave Massachusetts without support. The second was out of the question, since it would be virtually equivalent to a surrender of all the ends gained in the long struggle with the Sons of Liberty. A new method of procedure was therefore suggested: the committee proposed a continental congress, to which all questions involving the relations of the colonies to the mother country should be referred.[1] The sub-committee accordingly prepared a carefully worded letter,[2] dated May 23, in reply to the Boston correspondence; the offering of sympathy was chilled by the

[1] Bancroft is authority for the statement that the old committee of the Sons of Liberty, of which the leaders were Sears, Lamb and MacDougall, "were the first to propose a general congress. These recommendations they forwarded through Connecticut to Boston, with entreaties to that town to stand firm." — History of the United States, IV, 9. No date or authority is given. Roberts states (New York, II, 389) that a recommendation for a congress was sent to Boston, dated May 14, and signed by Sears and MacDougall. It is certain that a letter, dated May 14, was sent from New York to the Committee of Correspondence in Boston. *Cf. Boston Gazette*, May 23, 1774. *New York Mercury*, June 6, 1774. Extracts from this letter were published in the *Boston Gazette* of May 23. The letter so far as given in these extracts expresses hearty sympathy with Boston, and states that the inhabitants of New York are almost unanimously in favor of a complete non-intercourse agreement. Nothing is said about a congress and the letter as published is not signed. I have had the *Boston Evening Post*, *Boston Gazette*, *Massachusetts Gazette* and *Massachusetts Gazette and Post Boy* examined from May 1 to June 1, 1774; they contain no letter from New York signed by Sears and MacDougall and none earlier than May 23 proposing a general congress. If such a proposal was made by the radicals, it is probably to be found in the unpublished parts of the letter of May 14. *Cf.* Letter from New York to a Gentleman in London, May 31, 1774, 4 American Archives, I, 299, note. A general congress had been suggested informally by Franklin and others previous to the Boston Port Bill.

[2] The matter had evidently been discussed and some effort made to learn the sentiment of the province as a whole. *Cf.* Peter Van Schaick to Peter Sylvester, May 21, 1774, in Van Schaick, Life of Van Schaick, 17.

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statement that no action could be of permanent benefit which did not express the united voice of the colonies; the committee could, therefore, return no answer with reference to the "expedient" suggested by the Boston letter, but emphasized the necessity of immediately assembling a general congress.[1] The plan was favorably received in many colonies, and ultimately Massachusetts also agreed to it.[2]

But in referring the matter to a general congress, the Fifty-One had by no means rid themselves of the troublesome question of non-intercourse. A congress once determined upon, it became necessary to elect delegates to it; in this election the old issues reappeared. Were the delegates to stand for complete non-intercourse, or for modified non-intercourse and negotiation? Were they to represent the radical or the conservative faction of the city? On this issue the two parties prepared for the contest. The conservatives were represented by a large majority in the Fifty-One. The radicals were represented by a minority in the Fifty-One, but also (and at the close exclusively so) by a separate organization outside of the Fifty-One, the Committee of Mechanics — virtually indeed a continuation of the organization of the Sons of Liberty.[3]

[1] This letter has been quoted in full many times. Minutes of the Committee, 297, 298. *New York Mercury*, June 27, 1774. *Rivington's Gazetteer*, June 30, 1774. Dawson, The Park and its Vicinity, 58, 59. Its authorship is disputed; by some writers it is attributed to James Duane. *Cf.* Dawson, Westchester County, *etc.*, 17. By others to John Jay. *Cf.* American Biography, III, 408. Drake, Dictionary of American Biography, 483. Johnson, Jay Papers, I, 13, note.

[2] The Fifty-One received a letter from Boston dated May 30, but it is impossible to say whether this letter was meant for the Fifty-One in reply to its letter of May 23, or whether it was meant for the radicals who sent the letter of May 14, since it was addressed merely to the "Committee of Correspondence." The letter does not appear to be an answer to the Fifty-One's letter of May 23, for it assumes that Boston's request for a complete non-intercourse agreement had been answered favorably. The Fifty-One's letter of May 23 could scarcely have been misunderstood so far. Consequently a second letter had to be despatched, dated June 7, reasserting the position of the Fifty-One on the Boston "expedient," and urging strongly the necessity of a congress. The letters closed by begging that "your letters for the future may be sealed and directed to our chairman." Minutes of the Committee, 303.

[3] Leake states (Life and Times of General Lamb, 92) that the committee of the Sons of Liberty did not dissolve upon the election of the Fifty-One. This is true in the sense that the radicals had a separate organization known as the Mechanics

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The fight in the committee for the delegates began on June 27, when MacDougall made a motion relative to the "most eligible mode of appointing Deputies."[1] The question was postponed until the next meeting, June 29, when MacDougall forced the issue by a motion which looked toward a recognition of the Mechanics Committee as coördinate in authority with the Fifty-One: namely, that five persons, to be named by the committee, should be referred first to the mechanics for their concurrence, and then to the freeholders and freemen for their approbation.[2] Confident, however, in the strength of

Committee. Minutes of the Committee, 295. But the term "Sons of Liberty" practically disappears after the election of the Fifty-One. Leake proceeds to say (92, 93) that the committee of the Sons of Liberty called a meeting for June 19, the proceedings of which were disowned by the Fifty-One at its meeting of July 7. Undoubtedly the date here should be July 6 instead of June 19. The meeting of July 6 was called by the radicals certainly, but so far as I know the term "Sons of Liberty" does not appear in connection with it.

[1] Minutes of the Committee, 307. The question of the method of appointing delegates had been a subject of popular discussion for some time. A proposal to leave the matter in the hands of the assembly's committee elicited a broadside signed "A Citizen," dated June 30. The author (probably MacDougall. — *Cf.* To the Public, June 30, 1774, Broadsides, I) considers that the election of deputies calls for all the wisdom in the province. This end will fail if the assembly's committee name the deputies, for the committee has not the wisdom of all the freeholders. But "the city members assert the assembly's committee . . . are authorized . . . to appoint the deputies. . . . The people never gave the committee this power. Therefore if they have any such authority it must have been delegated them by the assembly." The author demonstrates that the assembly *did* not give this power and *could* not have done so legally, since the people alone have the right. Delay is opposed; "if the city committee does not without delay devise a plan for electing the deputies by votes of the people, I submit it to you whether each ward should not be called together, and the votes taken for Deputies by opening a poll in the manner observed in choosing aldermen." Broadsides, I. A more elaborate scheme was advocated in a Philadelphia paper under date of June 22. It was reprinted in a New York broadside, entitled, "To the Inhabitants of the City and Colony of New York." The author proposes that in each province those qualified to vote for assemblymen should proceed in the usual manner to elect deputies to a provincial convention, which should in turn elect from its own number delegates to the congress. The deputies from each county might then act as a county committee, and the provincial convention appoint a standing central committee. The author urges above everything that the election should be by some method which would secure the "actual, not the virtual" representation of the people. It was recognized, in other words, that extra-legal, far more than legal, activity needs to be broadly based in order to be efficient. Broadsides, I. This article, without heading or signature, is printed in 4 American Archives, I, 441.

[2] Minutes of the Committee, 307.

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their position, the conservatives felt that it should be no part of their program to recognize any other organization as sharing with the Fifty-One the right to act for the city and county. At the next meeting of the committee, July 4, the proposition of MacDougall was accordingly voted down, and an essentially similar motion, without the objectionable clause, was made by Mr. Bache. Defeated at this point, the radicals allowed the motion of Mr. Bache to pass without a division; but they at once assumed the offensive again by offering a ticket which they doubtless believed the conservatives might accept, but which, they nevertheless felt confident, would as a whole represent radical views. The ticket proposed consisted of Isaac Low, James Duane, Philip Livingston, John Morris Scott and Alexander MacDougall. The first two were preëminently of the conservative party; the last two were in an equal sense radicals. But Philip Livingston was neither the one nor the other; and certainly no one could have been named more likely to win the support of the conservatives for the ticket, and at the same time to secure a virtual representation for radical views in the congress. The conservatives were, however, too confident of their position to accept any doubtful compromises — indeed, they were probably too much opposed to the last two names on the ticket to accept it in any case — and the names of Scott and MacDougall were presently replaced by those of John Alsop and John Jay.[1]

The nomination thus made was to be presented to the "inhabitants" of the city and county for confirmation or rejection on Thursday, July 7, at the City Hall.[2] While the conservatives perhaps expected to meet with some opposition in the election of their ticket,[3] it does not appear that they gave themselves much concern about the matter. The radicals, on the other

[1] Minutes of the Committee, 308.

[2] Minutes of the Committee, 309. Broadsides, I.

[3] On Tuesday a broadside appeared in which the author expresses his hope that the "voice of the committee will be the voice of the people." Nevertheless, in view of the existence of "turbulent tempers," and the late attempt to appoint a committee of twenty-five, he fears objections may be raised on Thursday, and a demand be made for a "poll." Against this he counsels resistance. Broadsides, I.

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hand, were far from idle during the three days from Monday to Thursday. On Tuesday, July 5, the Committee of Mechanics met at Edward Bardin's tavern, and, having taken into consideration the ticket nominated by the Fifty-One, rejected the names of Duane and Alsop, which they replaced by the names of Leonard Lispenard and MacDougall.[1] The next day a broadside was circulated announcing that this ticket would be proposed at the meeting on Thursday in opposition to the ticket of the Fifty-One. Candidates had thus been nominated; a platform was necessary. Tuesday, July 5, a broadside was accordingly circulated by the radical leaders calling a meeting "in the fields" for six o'clock the following evening.[2] This meeting was presided over by MacDougall, who announced that the principal business of the evening was to counteract, as far as possible, the "vile arts" of their enemies in distracting the councils of America. For this purpose a series of resolutions were twice read, "and the question being separately put on each of them, they were passed without one dissentient."[3] In essence, these resolutions asserted that, since the liberties of America could best be preserved by a policy of absolute non-intercourse, the New York delegates should be empowered (and were thereby empowered) to bind the province to such a policy. The city committee of correspondence was formally instructed to carry out these resolutions, which were printed and sent to all of the colonies as expressing the well-considered sentiments of the city. The radicals now had a ticket and a platform; with these in hand they were ready, like any modern party, to "go before the people" on the following day.

The proceedings of the meeting at the City Hall on Thursday, July 7, are known only imperfectly. It is ascertained by inference that no delegates were elected, though it was the evident intention of both factions that this day's proceeding should constitute an election. Instead of this, however, for some reason which does not clearly appear, a new method of

[1] Broadsides, I.

[2] Broadsides, I. Minutes of the Committee, 310.

[3] *Rivington's Gazetteer*, July 14, 1774. *New York Mercury*, July 11, 1774.

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election was resolved upon, the results of which would prove far more satisfactory and incontestable than the uncertain decision of an unorganized mass meeting. This new method — the precise details of it, if indeed any were formulated, are unknown — amounted substantially to this: the Committee of Fifty-One and the Committee of Mechanics acting together were to canvass the city and county for votes on the candidates already nominated by the two factions.[1] That this plan might be carried out with no unnecessary delay, the Fifty-One assembled at six o'clock the same evening, and appointed a sub-committee to meet with a similar committee from the Mechanics at Fraunces' Tavern on the following day. The sub-committee was instructed to offer to the Mechanics the following plan for carrying out the agreement made at the City Hall: (1) that the two sub-committees should appoint two or more persons in

[1] The proceedings of this meeting are related in the Minutes of the Committee of Fifty-One as follows: "... it was unanimously agreed that this committee appoint a committee of their body to attend with the Committee of the Mechanics at Mr. Fraunces' at 10 o'clock to-morrow morning, in order to appoint two or more persons in each ward ... to take with them a list of the five persons nominated by this committee, and also a list of the five persons nominated by the Committee of the Mechanics ... and exhibit to the freeholders, freemen, and such of the inhabitants who pay taxes, both lists, leaving it to their election to sign either, for the five names nominated by the committee, or for the five nominated by the Committee of Mechanics." — *Minutes of this Committee*, 309. This purports to be an exact statement of the resolution entered into at the City Hall; it is impossible to say whether it is so, or whether it is merely the Fifty-One's interpretation of that agreement. The latter supposition is borne out by a letter of MacDougall's, published two days later, in which he announces his resignation as a candidate. "When I consider the manner in which the Committee of Correspondence have determined to carry the resolution at the City Hall into execution, I conceive your votes cannot be properly taken. They have determined that the papers containing the names of the five persons nominated by the Committee of Correspondence, and the five nominated by the Committee of Mechanics shall be presented to the voters, and that they must vote for one or other of the five ... or not be allowed to vote at all. This deprives the people of voting for any five of the seven." At the meeting of the sub-committees the method proposed by the Mechanics was "that seven columns should be ruled, one for each of the persons nominated; and that the elector's name should be put down and the persons in respective columns for whom they should vote." The merchants' plan will not obtain a fair vote, "therefore I decline the nomination of a Deputy." — Broadsides, I. From these two documents it appears probable that the resolution at the City Hall was of a general nature, as indicated in the text, and that the Fifty-One interpreted it in one way, and the Mechanics in another.

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each ward; (2) that the persons so appointed should take the ticket nominated by the Fifty-One and the ticket nominated by the Mechanics, and present both of them to the "freeholders, freemen, and such of the inhabitants who pay taxes"; (3) that each voter should be permitted to sign either ticket. This plan made individual selection impossible. It was very likely designed by the Fifty-One for the express purpose of defeating MacDougall, since it forced those who might be willing to sacrifice Duane *or* Alsop for MacDougall (and the popularity of MacDougall made it probable that there were many such) to sacrifice *both* of them. So, in any case, the sub-committee of the Mechanics interpreted it. Consequently they objected to the plan, and proposed in its stead that the seven candidates should be offered as a single list, from which each voter should choose any five, the five receiving the highest number of votes to be declared elected. To this it appears that the conservatives in turn refused to agree, for on Saturday MacDougall resigned as a candidate on the ground that the plan of the Fifty-One was unfair. There is no evidence that the canvass was ever made.

So far as the election of delegates was concerned, the situation was now precisely what it had been; the Fifty-One had nevertheless been forced to recognize the Committee of Mechanics and to treat with it as a coördinate authority. It was not the Mechanics Committee, however, which particularly sharpened the edge of conservative resentment, but the fact that the radical members of the Fifty-One used every effort outside of the committee to defeat the execution of measures which they were unable successfully to resist within the committee. The meeting of the Fields, July 6, which had contributed more than anything else to the fiasco at the City Hall, had been presided over, and very likely instigated and called, by a member of the Fifty-One, without its sanction, in his mere private capacity. Such a rebuff, since it constituted also a breach of discipline, was not to pass without notice. Accordingly, at the meeting of the committee in the evening of July 7, Mr. Thurman introduced a resolution of censure, disavowing the meeting

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in the Fields and its proceedings, on the grounds, first, that no individual had authority to call a meeting of the city, and second, that no series of resolutions should be agreed to by the city, until well considered by the committee and presented by it to the public in the regular manner.[1] This resolution, which passed by a vote of twenty-one to nine,[2] was followed by a motion to publish the minutes of the committee relating to it, which was also carried by a vote of thirteen to nine — eight members apparently having left the chamber before the vote was taken.[3] If a conservative account is to be believed,[4] eight of the nine members who opposed these resolutions immediately ordered their names to be erased from the membership roll, and on the following day, July 8, published a formal resignation, in which they were joined by three other members, absent the evening before. The eleven who thus resigned included the leading radicals. Whether they only awaited a favorable opportunity to withdraw cannot now be known; it is certain that the small minority in which they found themselves, and the uncompromising temper exhibited by the majority, must have convinced them of the uselessness of remaining longer on the Committee of Fifty-One. Their resignation was justified on the ground that the right of the people to assemble and adopt resolutions was not conditioned by the will of any committee whatever, while the printing of the resolution of censure was an unusual and unnecessary procedure, calculated to encourage the English government and destructive of the ends for which the committee had been elected.[5] No serious

[1] Minutes of the Committee, 310, 311. [2] *Ibid.*, 311.

[3] *Ibid.*, 312. The radicals claimed that the motion to publish was made after the adjournment had been moved, when "some of the members were gone, and one going down stairs." 4 American Archives, I, 314. However this may be, eight of those voting on the previous motion did not vote on the motion to publish. Whether they did not vote because they had left, or whether they left because they did not wish to vote, does not appear.

[4] "Those who quitted the chamber in a rage, ordering their names to be struck off, and afterwards bawling along the streets, 'The committee is dissolved, the committee is dissolved,'" *etc.* One of the Committee to the Inhabitants, July 9, 1774. Broadsides, I, printed in 4 American Archives, I, 314.

[5] In the resignation it was stated that "printing the proceedings of the committee has been agitated several times, and judged inexpedient." According to

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attempt was made to induce the dissatisfied members to withdraw their resignation. The event therefore marks the measurably complete separation of the two factions, each with its own organization, each in a position to compel recognition from the other.

While both parties thus organized had fixed upon candidates, the radicals had in addition formulated (in their resolutions of July 6) the policy for which those candidates stood — a policy which was clear-cut and well understood. Hitherto the conservatives had given no more definite indication of what their candidates stood for than might be gathered from the non-committal letter to the Boston committee; the aggressiveness of their opponents now forced this question to the front. Having disavowed, in a formal manner, the radical resolutions of July 6, the Fifty-One was left with no alternative but to publish resolutions which it would avow; a course of mere negation could win the conservatives nothing, while it left their candidates with no other strength than their own personal influence and their individual reputations for a more or less extreme conservatism. On the evening of July 7 a sub-committee was accordingly appointed to draw up resolutions to be proposed to the people, "expressing their sense of the Boston Port Act, and our concurrence with such of the neighboring colonies as have declared what may . . . be done for . . . the

the rules, proceedings were secret. Minutes of the Committee, I, 299. At first the minutes were not published, though accounts of what was done were reported to the papers. "This day they will assemble again. Afterwards it is hoped their proceedings will be published for the information of their constituents." *New York Mercury*, June 13, 1774. Mr. Thurman's motion appears to have been the first of the minutes to be published *in extenso*. It was not mere personal spite, as suggested in the letter of resignation, that led the Fifty-One to publish its proceedings in this instance contrary to custom. The resolutions of July 6, which they were now disavowing, had been "held up to the world" as the well-considered views of the city and county, when, as a matter of fact, they constituted a party program merely; the conservatives wished them to be understood as such. One of the Committee to the Inhabitants, July 9, 1774. Broadsides, I. *Cf.* Wm. Smith to Philip Schuyler, July 19, 1774, in Lossing, Schuyler, I, 282. The resignation was addressed "To the Inhabitants of the City and County of New York, July 8, 1774." It was published in a broadside with an account of the committee's proceedings. Broadsides, I. The letter alone is printed in 4 American Archives, I, 313, 314.

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redress of American grievances."[1] A subterfuge lurked, in some measure, in these directions, since a square meeting of the issue required a statement of the instructions which the conservatives believed should govern their delegates if they were sent to Philadelphia. The resolutions themselves, which were reported at the next meeting of the committee, laid the conservatives open, only the more flagrantly, to the charge of evasion and insincerity. On the direct questions they asserted that it was premature to instruct the delegates, who ought nevertheless to be in a position to pledge the colony to any policy which might be deemed expedient. As to what that policy should be, the resolutions went only so far as to suggest that if a non-importation agreement were entered into, it should be "very general, and faithfully adhered to," otherwise such an agreement could serve no good purpose.[2] While these resolutions of the Fifty-One lacked the clear-cut positiveness of the radical resolutions of July 6, it is doubtful if they were so constructed for any mere vote-catching purpose, since they certainly added nothing to the influence and reputation of the candidates themselves. It may be supposed rather that they were truly expressive of the hesitation and uncertainty

[1] Minutes of the Committee, 312.

[2] The minutes for July 13 are printed in full in the Archives. The editor has the following in brackets: "The committee appointed on the 7th instant, presented a set of resolutions to be presented to the city." Minutes of the Committee, 315. This is not strictly correct. Three members of the committee appointed on the 7th had resigned from the Fifty-One. The remaining members, doubting their authority to draw up resolutions, appeared on the 13th and referred this matter to the general committee. A new sub-committee was then appointed, and this committee presented a series of resolutions which in substance were as follows: (1) Loyalty to George III fully asserted; (2) Port Act unprecedented and arbitrary, and (3) not the result of the destruction of the tea merely; (4) vengeance separately directed is the most dangerous; therefore it is the duty of all the colonies to give every "reasonable assistance" to Massachusetts; (5) the proposed congress is the most advisable method of procedure; (6) premature to instruct delegates; (7) only the direst necessity would justify measures injurious to the English merchants; (8) a non-importation agreement only partly observed, like the last, would be worse than none; (9) delegates should be so chosen as to be able to pledge themselves for the colonies they represent; (10) thanks due to friends in England. Proceedings of the Committee of Correspondence in New York, July 13, 1774. Broadsides, I. The resolutions slightly amended in Articles 2, 3 and 7 are in the published minutes. Minutes of the Committee, 316.

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which characterized the views of so many of the committee at this time. However this may be, the resolutions were accepted by the Fifty-One, which ordered them published and directed that the people should be assembled to act upon them. And, since the two parties had failed to agree upon the method of canvassing the city for votes on the delegates, the committee now fell back upon the original method of election by mass meeting; it was accordingly ordered that the conservative candidates should be offered to the people at the same time as the resolutions. The date fixed upon for this meeting was the 19th.[1]

It is clear enough, even in the absence of documents, that the radicals accepted the challenge to a popular election, for they controlled the meeting from first to last,[2] though it is difficult to determine in all respects just what they succeeded in doing. It appears that the conservative, rather than the radical, ticket and resolutions were presented to the people for their decision — perhaps because the meeting had been called by the Fifty-One, perhaps because (and the sequel bears this out) the radicals desired to reject the conservative ticket and resolutions without, for the moment, confirming their own. The decision of the people with reference to the delegates was apparently affirmative in character, though by no means decisive, for on the following day a card appeared, signed by Low, Alsop, and Jay, stating that "notwithstanding the proceedings of yesterday at the Coffee House," the sense of their fellow-citizens "remains so uncertain" that they cannot

[1] Proceedings of the Committee, *etc.*, July 13, 1774. Broadsides, I. Minutes of the Committee, 315.

[2] There appears no record of any formal organization of the radicals preparatory to this meeting; but it is not to be doubted that they were well agreed as to what should be done. The influence of men like MacDougall and Scott was very great with the people, and street-corner caucuses were the order of the day. One broadside writer, in speaking of the former, mentions "his eloquence so liberally bestowed at the corner of every street where he can find . . . people to be his auditors." — To the Public, July 20, 1774. Broadsides, I. In any case the radicals were sufficiently well organized to elect J. M. Scott chairman, though he himself denied any knowledge that such was the intention. To John M. S——, Esq., July 23, 1774. Broadsides, I.

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consider themselves or any others as duly elected.[1] As for the resolutions, it is certain that, having been subjected to a severe criticism by the chairman, they were rejected.[2] It seems, however, to have been no part of the radical plan to present their own resolutions of July 6 to the meeting for its decision. After the action of the meeting on the conservative delegates, they doubtless saw clearly that no decisively affirmative result could be obtained for any proposition to which there was any serious objection; from the very nature of a mass meeting a decision must be useless unless unanimous, or nearly so. The radicals could scarcely hope, therefore, to gain anything by presenting their resolutions of July 6. But if compromise was necessary, they were unwilling to intrust the duty of arranging it to the conservative committee. The meeting accordingly proceeded to name a new committee, composed of five conservatives and ten radicals, which was instructed to draw up a fresh set of resolutions to be presented at a future meeting.[3] The conservatives, defeated at every step, still refused, nevertheless, to surrender the initiative. On the morrow, when the new committee of fifteen was summoned to meet at Mr. Doran's, only the ten radical members responded in person to the call.[4] The conservative members sent a letter in which they stated their refusal to serve on a committee which, in their opinion, was too irregularly elected to draw up authoritative resolutions: in any case, their own views being expressed

[1] To the Respectful Public, July 20. Broadsides, I. *New York Mercury*, July 25, 1774. *Rivington's Gazetteer*, July 21, 1774. 4 American Archives, I, 317.

[2] The printed minutes state that a small number assembled and the sentiments of the majority still remained uncertain. Minutes of the Committee, 315. The seceding members of the new committee of fifteen stated that the resolutions were "rejected." To the Respectful Public, July 20, 1774. Broadsides, I. A letter from New York to Boston stated that the resolutions "were rejected as destitute of vigor, sense, and integrity." 4 American Archives, I, 317, note. "It was he (*i.e.*, J. M. Scott) who harangued the people, and prevailed upon them to discard the resolutions of their Committee of Fifty-One, as void of vigor, sense, and integrity." Works of John Adams, II, 346. *Cf.* To John M. S——, Esq., July 23, 1774, in Broadsides, I.

[3] Letter of Low, Jay, Remsen and Moore, To the Respectful Public, July 20, 1774. Broadsides, I. *New York Mercury*, July 25, 1774. 4 American Archives, I, 317.

[4] *New York Mercury*, July 25, 1774.

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in the resolutions of the Fifty-One, they could be of no service in the present instance.[1] Having read this letter, the ten members assembled at Mr. Doran's proceeded to draw up a series of thirteen resolutions, which were at once less vague than those of the Fifty-One, and less extreme than those adopted at the radical meeting of July 6. The rights of the colonies were more vigorously asserted than in the former, while, on the other hand, without instructing the delegates in any way, it was agreed that the province should consider itself bound by the decision of the congress.[2]

Certainly these resolutions conceded much to the conservatives — so much indeed that the two factions no longer had any serious grounds for difference, especially as the Fifty-One had at the same time taken measures to strengthen their own resolutions somewhat.[3] This substantial agreement in respect to resolutions was possible, however, only on condition that the real question at issue should be left out of consideration; in waiving the question of instructions, that is to say, the resolutions became of secondary importance and all interest once more centred in the delegates. At its meeting on the evening of the 19th, the Fifty-One had indeed again brought forward its scheme of canvassing the city for the votes of the "freeholders, freemen and such others who pay taxes" on the candidates whom they had nominated.[4] On the other hand, the

[1] Letter of Low, Jay, Remsen and Moore, To the Respectful Public, July 20, 1774, *as above cited.*

[2] These resolutions may be summarized as follows: (1) allegiance to the king; (2) allegiance entitles to protection and equal rights; (3) the common inheritance of all British subjects to be free from taxes not laid personally or by representatives; (4) taxes on colonies unconstitutional; (5) Port Act unparalleled in rigor and destructive to liberty; (6) and is more dangerous than if directed against all colonies alike; (7) duty of all to oppose Port Act; (8) minds of all should be as one; (9) therefore we approve the congress; (10) and will abide by its decision; (11) best method of electing delegates by provincial congress; (12) thanks due to our agent in England; (13) approve conduct of Committee of Fifty-One relative to Boston poor. These resolves were ordered printed and a meeting was called at the City Hall, July 25, to act upon them. *New York Mercury*, July 25, 1774. For criticism *cf.* Democritus, Remarks upon the Resolves of the New Committee, July 22, 1774. Broadsides, I.

[3] Minutes of the Committee, 315, 316, 318. *Cf. ante*, p. 35, note.

[4] *Ibid.*, 315.

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committee of fifteen (or of ten, since the conservative members refused to act) had, in its resolutions of the 20th, suggested a provincial convention, and meanwhile had called a meeting of the city for the 25th, to receive its report. So far as is known, nothing came of the proposition of the Fifty-One. In response to the call issued by the committee of fifteen, a number of persons did indeed come together on the 25th, but as to what was done, one must needs be content with the statement that "nothing decisive was resolved upon."[1]

At this point, after more than two weeks of practically fruitless maneuvering, the Fifty-One finally came forward with a plan which was carried out so swiftly and smoothly that the inference of a previous arrangement is all but imperative. A singular lack of information for the period from July 20 to July 25, and the meagre account of the meeting on the latter date, make it entirely possible that such an arrangement was entered into at that time; while the fact that the plan was proposed at a meeting of the Fifty-One on the evening of the 25th (the very day on which the general meeting called by the committee of fifteen was held) tends strongly to confirm such a supposition. The plan in question, which was moved by Mr. Remsen, was substantially as follows: (1) that the polls be opened at the usual places in each ward on Thursday, July 28, at nine o'clock in the morning, to elect "five deputies for the city and county of New York"; (2) that, "in order that the same may be conducted in the most unexceptionable manner," the election be supervised in each ward by the aldermen, common council and vestry, by two persons appointed by the Mechanics Committee and by two persons appointed by the Fifty-One; (3) that freeholders, freemen and persons "who pay taxes" be deemed qualified to vote.[2] This plan, which required a distinct concession from the

[1] *Rivington's Gazetteer*, July 28, 1774. *New York Mercury*, August 1, 1774.

[2] This motion, made without preamble or explanation, was ordered printed in handbills, no copy of which, so far as is known, has been preserved. It might very likely throw light upon events leading up to Mr. Remsen's motion. Minutes of the Committee, 318, 319. *Rivington's Gazetteer*, July 28, 1774. *New York Mercury*, August 1, 1774.

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conservatives, did not differ essentially from the proposal which the radicals had previously made, and they were found quite willing to settle the matter in this way.[1] But instead of adhering to their own ticket, as one might expect them to do in view of the steady gains lately made at every point, the radicals at once took steps for withdrawing that ticket in favor of the conservative candidates. On the 26th a meeting was held at Mr. Mariner's, which sent a letter by committee to the conservative candidates stating that, if the latter would agree to work sincerely in the congress for a complete non-importation agreement, the radical ticket would be withdrawn, otherwise not.[2] To this letter four of the conservative candidates replied on the following day that they would use their

> utmost endeavors to carry every measure into execution at the proposed congress, that may then be thought conducive to the general interests of the colonies; and, at present, are of opinion that a general non-importation agreement, faithfully observed, would prove the most efficient means to procure a redress of our grievances.[3]

This reply was found satisfactory by the meeting at Mr. Mariner's, and it was then unanimously resolved to confirm the nomination of the conservative candidates. The election now became a mere matter of form. On July 28 the poll was opened; the election passed off quietly, and in the evening the Fifty-One, having duly examined the lists, had the satisfaction of recording that Philip Livingston, Isaac Low, John Jay, John Alsop and James Duane, "the persons nominated by this committee," were unanimously elected.

Whether prearranged or not, this agreement between the two factions is somewhat difficult to understand. It is not strange perhaps that the Mechanics should have made the proposal, for they may have been informed of the willingness of the conservative candidates to accede to it; nor strange perhaps that those candidates should have entertained such

[1] The city authorities were also quite willing to serve and the sub-committees were appointed. Minutes of the Committee, 320.

[2] Minutes of the Committee, 319. *New York Mercury*, August 1, 1774. *Rivington's Gazetteer*, August 4, 1774. [3] *Ibid.*

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demands favorably, for they may have despaired of winning in any other way an election upon which they were determined at any cost. The curious part of it is that the radicals at Mr. Mariner's should have been satisfied with the reply which was returned to them, for in no essential respect did the conservative candidates pledge themselves to carry out the radical program; they merely said they were *at present* in favor of a non-importation agreement *faithfully observed*, and at the congress would work for whatever seemed *then* for the best interests of the country. The conservatives had said as much as this before.[1] It was far from saying (what the radicals had demanded of them) that they would "use their utmost endeavors" to secure a non-importation agreement. As a matter of fact, the influence of the New York delegates in the congress was exercised along conservative lines.[2] It is difficult, therefore, to see why the conduct of the conservative candidates should call for particular comment, not to say censure:[3] it is rather the conduct of the radicals which seems inexplicable.

3. *The Rural Counties.* — With a possible exception or two the rural counties had always been strongly conservative. The Stamp Tax and the Tea Act created but little excitement outside of New York City, while of the protracted and bitter factional conflict which occupied the metropolis during the summer of 1774 there is scarcely a reflection elsewhere in the province. Nevertheless the example of New York City had its effect; under its leadership a beginning in popular organization was made in some of the counties, and some were induced to send delegates to the Continental Congress.

It is not remarkable that one of the first acts of the Committee of Fifty-One should have been directed to the formation of similar committees throughout the province; for, although

[1] *Cf.* Resolutions of the Fifty-One, Minutes of the Committee, 316.

[2] 4 American Archives, I, 324, note, 957, 1098. Colden's Letter Book, II, 350, 352, 360. Bancroft, History of the United States, IV, 34, 70. Flick, Loyalism in New York, 26.

[3] *Cf.* Dawson, Westchester County, *etc.*, 26, 27. Smith to Schuyler, November 22, 1774, in Lossing, Schuyler, I, 288.

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the rural districts may not have had the same interest in opposing absolute non-intercourse as the merchants of New York,[1] it was indisputable that the conscious conservatism of the great landowners and the instinctive conservatism of the small farmers would lead them to support the Fifty-One rather than the Mechanics. The vital question was, Could this conservative majority be induced to take any positive action at all, or would it remain passively aloof, thus leaving the field open for the radical minority? Without seeing or without fearing this danger, the Fifty-One, at its second meeting, May 30, appointed a sub-committee to draft a circular letter to all the counties in the province.[2] The letter, which was reported on the following day, acquainted the counties with the appointment of the Fifty-One, and suggested that each county should appoint a similar committee to correspond with it.[3] Of the three hundred letters which were ordered printed, a certain number was sent to the treasurer of each county, who in turn was instructed to distribute them to the supervisors.[4]

This appeal met with no general response. So far as is known positively, only three counties took any action in the matter. These were Suffolk, Orange and Cumberland.[5] The earliest action was taken by the "inhabitants of the parish of Southhaven," in Suffolk County, who met on June 13, appointed William Smith moderator, voted resolutions in favor of absolute non-intercourse, and appointed a standing committee of seven

[1] *Cf.* nevertheless, Colden to Dartmouth, November 2, 1774. 4 American Archives, I, 957.

[2] Minutes of the Committee, 299. Van Schaick, Life of Van Schaick, 17.

[3] Minutes of the Committee, 300.

[4] *Ibid.*, 300, 301. Dawson, Westchester County, *etc.*, 20.

[5] The Fifty-One received a letter from Tryon County dated June 22, one from Albany dated June 29 and one from Dutchess dated June 29. Minutes of the Committee, 308, 309. It is likely that these letters were replies to the request of the committee; it is even likely that some favorable action was taken in the case of Albany, for the letter was signed by Jacob Lansing, who was chairman of an Albany committee in August. *Cf.* Lossing, Schuyler, I, 289. Onderdonck, Documents and Letters . . . of Queens County, 14. In the case of Tryon County this letter was probably from the supervisors stating that Tryon County would take no part whatever in the dispute with the mother country. 4 American Archives, II, 151.

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to correspond with the committee "in New York city and others."[1] Eight days later a "town meeting" of Huntington passed similar resolutions and appointed a committee "to act, in conjunction with the other towns in the county, as a general committee of the county, to correspond with the committee of New York."[2] Resolutions of some sort were drawn up at Shelter Island and Easthampton also, while it is possible that the "general committee" spoken of in the Huntington resolutions may have been formed.[3] Only one town in Orange County appears to have responded to the letter of the Fifty-One. On July 4 the freeholders and inhabitants of Orange town passed resolutions favoring non-intercourse, and appointed a committee of five to correspond with the city of New York.[4] In Cumberland County it appears that the supervisors refrained from laying the letters before the towns, with the intention of saying nothing and doing nothing about it. But in September it became known that such letters existed, and a delegation from Rockingham and Westminster waited upon the supervisors and insisted that the directions of the Fifty-One should be carried out. This was finally done, however reluctantly, and on October 19 and 20 a "county congress" was held at Westminster, consisting of eighteen delegates from twelve towns, which passed a series of resolutions and appointed a committee of five to correspond with New York.[5]

It will thus be observed that, with the exception of Cumberland (and there action was not taken until long after the New York delegates had been elected), none of the counties responded to the letter of May 31 by what could in any sense be called an authoritative action. Not only so, but the individual towns which did reply must have disappointed the committee, since every one of them, so far as there is record, declared for

[1] *New York Mercury*, June 27, 1774. The Fifty-One received a letter from Southampton dated June 22. Minutes of the Committee, 307.

[2] 4 American Archives, I, 453. Bayles, Suffolk, 136.

[3] Minutes of the Committee, 307, 308.

[4] 4 American Archives, I, 506.

[5] A Relation of the Proceedings of the People of the County of Cumberland, March 23, 1775. 4 American Archives, II, 218. *Ibid.*, 1064, 1065.

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complete non-intercourse. This meant merely — what the Fifty-One had perhaps failed to foresee — that the conservative spirit of the counties was first expressed, as it had indeed been in New York City itself, negatively and not positively — that is, by refusing or neglecting to take any part whatever in the movement. The effort of the Fifty-One to strengthen its own position by appealing to the rest of the province had, therefore, no other immediate practical result than that of encouraging the radicals to hope for support where they had probably never expected to find any; in the light of the resolutions from Suffolk and Orange it is not difficult to understand the proposal for a provincial convention which was incorporated in the radical resolutions of July 6, and again in those of July 20.

But the Fifty-One did not despair in the face of one defeat. If the conservative elements in the counties failed to appoint committees for a general purpose, it was hoped that they would at least see the necessity of making their influence felt in the specific matter of electing delegates to congress. On July 29, accordingly, a second circular letter was prepared by the Fifty-One and sent to all the counties in the province. Each county was urged either to elect delegates of its own or to authorize, in explicit terms, the New York delegates to act for it.[1] The result in this case was nevertheless but little less discouraging than before. Three counties only sent delegates of their own — Kings, Orange and Suffolk — and in none of them can it be said certainly that the election was a representative expression of the county's wishes. In Orange County Henry Wisner and John Waring were chosen, on August 16, by "a meeting of the several committees of the county of Orange."[2] The term "several committees" indicates that this was a delegated county meeting; if so, it may have been fairly representative of the county. On the other hand, Colden understood it to be a primary rather than a delegated meeting, for he speaks encouragingly of the fact that out of one hundred freeholders in

[1] Minutes of the Committee, 322.

[2] 4 American Archives, I, 322, note, 901.

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the county "not twenty persons" attended.[1] Of the election of William Floyd from Suffolk, still less is known; he was present at the congress on the first day and presented credentials which were considered satisfactory.[2] The election in Kings County, as related by Galloway, recalls the oft-repeated story of old Sarum. Two persons assembled; one was made chairman, the other clerk; and the latter certified to the congress that the former, Mr. Simon Boerum, was unanimously chosen for the county of Kings.[3]

Four counties, in a more or less authoritative way, authorized the New York delegates to act for them. These were Albany, Westchester, Dutchess and Ulster.[4] Albany certainly elected delegates of its own,[5] but for some reason the New York delegates were ultimately authorized to act in their stead.[6] The action of Westchester was the most representative of any of the four. Meetings were held in the individual towns of Bedford, Mamaronec, Rye[7] and Westchester, and later a general

[1] Colden to Dartmouth, October 5, 1774. Letter Book, II, 367. New York Colonial Documents, VIII, 493. 4 American Archives, I, 879.

[2] 4 American Archives, I, 893. Bayles, Suffolk, 107.

[3] Examination of Joseph Galloway, *New York Journal*, October 25, 1779. Galloway stated that he had the story from "almost all the delegates of New York." *Ibid.*, December 6. However elected, Kings was certainly not enthusiastic, for it was one of the counties which, as late as September 29, were urged to send delegates, and Boerum did not take his seat until October 1. Minutes of the Committee, 326. 4 American Archives, I, 906.

[4] Ulster is not usually included with Albany, Dutchess and Westchester because congress received no credentials from that county authorizing the New York delegates to act for it. 4 American Archives, I, 896. But action was taken in Ulster quite as authoritative as in Dutchess, and it was one of the four to send a deputation to New York to authorize the delegates of the latter county to act. To the Public, January 18, 1775, in Broadsides, I.

[5] The action of Albany County is not clear. A meeting in Albany on August 13 resolved that Robt. Yates, Peter Sylvester and Henry Van Schaick should be the delegates if "approved by the majority of the delegates from the several districts at a general meeting for the county." 4 American Archives, I, 322, note. But on August 23, Jacob Lansing, chairman of the Albany committee, wrote to Colonel Schuyler informing him that he had been appointed a delegate. Lossing, Schuyler, I, 284. This is confirmed. "The county of Albany have chosen Philip Schuyler, Esq. to represent them as a delegate at the general congress." *Rivington's Gazetteer*, September 1, 1774. *Cf. New York Mercury*, September 5, 1774.

[6] 4 American Archives, I, 896. Minutes of the Committee, 326.

[7] August 10. Four delegates were chosen to consult with delegates from other towns. Later eighty-three of the inhabitants of Rye disclaimed any share in or sympathy with the proceedings. 4 American Archives, I, 802, 803.

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county meeting was assembled at White Plains. The action of Dutchess County is not very clear and was certainly not representative.[1] At least three meetings were held in Ulster County at which the New York delegates were authorized to act for those who were present, if not for the whole county.[2] The remaining six counties were apparently entirely unresponsive to the appeal of the Fifty-One.[3]

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[1] August 10, a meeting of freeholders at Poughkeepsie, of which Z. Platt was chairman, decided not to appoint delegates. Resolutions were passed favoring action through the assembly. No mention was made of congress or of the New York delegates. 4 American Archives, I, 702. Yet on August 20 Platt informed the Fifty-One that his precinct authorized the New York delegates to act for it. *Ibid.*, 324. Later the Fifty-One received another letter from Poughkeepsie, dated August 31, "approving the resolves and delegates of New York." *Ibid.*, 326. Whether other meetings were held is not known, but in any case both the New York delegates and the congress were informed of the wish of Dutchess to be represented through the New York delegates. To the Public, January 18, 1775, in Broadsides, I. 4 American Archives, I, 896. Smith, Dutchess County, 340.

[2] Kingston and New Winsor approved "of the delegates adopted for the city and county of New York." Minutes of the Committee, 325. "Wednesday last (August 31) a great number of inhabitants of Ulster County had a meeting and agreed in sentiment with their brethren in New York, and did not intend sending any delegates to . . . Philadelphia." *New York Mercury*, September 5, 1774. The New York delegates were informed of Ulster's wishes by committee (To the Public, January 18, 1775, in Broadsides, I), but no authorization was sent to congress.

[3] In Tryon County the Palatine district was active in approving the New York delegates. 4 American Archives, I, 740. But apparently a majority of the county was in favor of taking no part in the congress. *Ibid.*, II, 151.

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AN AMERICAN MUNICIPAL PROGRAM.

IN America we have forty-five states, each clothed with full authority to establish and regulate municipal corporations and to determine the extent of their powers. Each state differs from every other in physical, industrial, social and political characteristics. Some are possessed of fairly homogeneous populations; others of just the reverse. In some the New England idea regarding town-meeting government holds sway; in others the southern county ideas prevail; and in still others we have the Pennsylvania borough and township system. In some, the Republican party, with its principles of centralized government and liberal construction, predominates; in others, the Democratic party, with its theories of strict construction and state supremacy, holds control. Under such a state of affairs the difficulty of framing an American municipal program, embodying the principles that must underlie successful municipal government, is obvious to the most casual observer. This, however, was the task to which the National Municipal League addressed itself.

Organized in 1894, this body set before itself the duty of promoting the thorough investigation and discussion of the conditions and details of city administration; of the methods of selecting and appointing officials in American cities, and of the laws and ordinances relating to such subjects. Within three years four national conferences were held at Minneapolis, Cleveland, Baltimore and Louisville respectively. At these meetings the municipal conditions of leading cities were discussed by thoughtful and observant students. Local conditions were described and analyzed. As a result of these conferences and these discussions, reformers who previously had had but local experiences and were ignorant of one another's work, came to a realization of the existence of an American municipal problem, which was more than a local

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issue and of greater direct consequence to the people of the country than perhaps any other single question confronting them for solution. The reformers were brought to feel that while there might be numerous local variations due in part to environment, nevertheless the general features were the same and might be summed up as follows :

> Wastefulness, a disregard of the public interest where private ones were concerned; inefficiency; frequent corruption and scandals; and an indifference on the part of the citizen, at once dangerous to the welfare of the community and subversive of popular government.

There was a general acquiescence in these conclusions, although a great diversity of opinion as to their causes. Indeed it was a most interesting and somewhat unusual state of affairs which confronted the members of the league ; there was a substantial unanimity as to the condition of affairs and an apparently hopeless diversity as to its cause and remedy. Accordingly it was not surprising that no attempt was made to commit the organization to a statement of principles or to any creed; although there had been in the minds of its founders the hope and expectation that the time would come when municipal reformers would be able to agree upon a line of action which all could follow and upon a statement of principles which all could espouse.

From January, 1894, to May, 1897, steadily pursuing its work, the National Municipal League made no attempt to formulate its creed, but preferred to study with care and diligence existing municipal conditions. This done, what was to be the next step? the relegation of the whole matter to the field of academic discussion? or an attempt to outline a practical plan of work? At the Louisville Conference for Good City Government (1897) the following resolution was unanimously adopted :

> Resolved, That the executive committee appoint a committee to report on the feasibility of a Municipal Program, which shall embody the essential principles that must underlie successful municipal government, and which shall also set forth a working plan or

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system, consistent with American industrial and political conditions, for putting such principles in practical operation; and said committee, if it find such a Municipal Program to be feasible, is instructed to report the same, with its reasons therefor, to the league for consideration.

In accordance with this action the following committee was appointed: Horace E. Deming, of the New York bar; Professor Frank J. Goodnow, of Columbia University; Dr. Albert Shaw, Editor of the *Review of Reviews;* Charles Richardson, of Philadelphia; Dr. L. S. Rowe, of the University of Pennsylvania; George W. Guthrie, of the Pittsburg bar, and Clinton Rogers Woodruff, of the Philadelphia bar. These men, with a single exception, were college bred; and five had a legal training, although but three were practicing lawyers. Belonging to different parties, looking at the question of municipal government from widely different standpoints, trained in different schools of political thought, the members of the committee came together to discuss the object of their appointment, after there had been a preliminary exchange of propositions and suggestions. In November, 1898, at Indianapolis, the committee made its preliminary report in the shape of drafts of a constitutional amendment and a municipal corporations act, saying:

> The fact that a body of men of widely divergent training, of strong personal convictions, who approached the matter in hand from essentially different points of view, could and did come to unanimous agreement that a Municipal Program was feasible and practicable, and by fair and full comparison of opinion were able to embody the result of their agreement in definite propositions, is a hopeful augury that the general body of the league after full opportunity for discussion, criticism and interchange of views, can and will adopt the committee's propositions or some improvement upon them.

The augury was justified by subsequent events; for the final report of the committee was unanimously adopted after two annual meetings had been devoted to a careful discussion of the whole subject.

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The report consists of certain suggested constitutional amendments for adoption in those states where it will prove feasible to proceed in this direction and a municipal corporations act for those states where the amendment of the constitution is out of the question for the present; together with certain definite and descriptive papers prepared by members of the committee, but examined and approved by all, setting forth the philosophical, political and psychological relations of the recommendations to existing conditions.

The need of the constitutional amendments becomes apparent when the fact is recalled that in each state there is a fundamental law adopted directly by the people, defining the duties and powers of the various departments of the government and forming the limits within which these can act. If our conditions were similar to those existing in England, the task would be much simpler, for then only a municipal corporations act would be needed. In America, however, we must first consider our state constitutions and see that they will permit of the organization of the cities on the lines of the municipal program; hence the necessity for constitutional amendments.

The American state constitutions are much more difficult to change than are state acts of assembly. Therefore a constitutional reform is much more likely to become permanent, as the American people, being loath to tamper with their fundamental law, refuse to change back again hastily when once a change has been agreed upon and address their efforts to adjusting themselves to the new order of affairs. A constitutional change has two distinct advantages; in the first place, it can be made much more far-reaching; and, secondly, it is practically a permanent change.

The constitutional amendments proposed by the committee treat of four subjects: (1) the relation of the municipality to the state (that is, to some one of the forty-five states); (2) the powers of the municipality; (3) the procedure in the exercise of municipal functions; (4) the franchise and the civil service.

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One of the greatest evils with which American municipal reformers have had and now have to contend is the tendency to what is known as a special legislation — that is, legislation intended for special occasions and of special application. In Pennsylvania, for instance, at one time special legislation was carried to such an extreme that the legislature granted divorces and changed the names of individuals. Happily this is no longer possible, but there is still in this same state considerable special legislation enacted under the form of general acts. In Ohio this tendency had perhaps the greatest development. Every city was in a class by itself, so that by legislating for a class special legislation for a particular city was secured. As a consequence, a city seeking relief from a municipal evil failed to look to itself for correction, but went to the state legislature for relief. In this way the principle of municipal home rule was violated and the vicious habit of depending on some outside source for relief engendered and fostered; a habit which was confirmed by the failure to give our cities sufficient power to relieve themselves, if they desired. As an illustration of the extent to which this habit has grown in some states I may cite the testimony brought out by Senator Fassett's committee in New York in 1890, to the effect that from 1884 to 1889 no less than 1284 acts were passed by the New York Assembly relating to cities; and of these acts 390 affected the city of New York — an average of 78 a year.

The committee believed that this evil should be remedied and that it was due to the lack of an adequate definition of special legislation in the fundamental law and to the failure to give to the cities adequate powers to enable them to solve their own problems. Hence the project of the committee defined special legislation to be "legislation which is not made applicable to all the cities of [a given state] or all the inhabitants thereof," and embodied provisions by which the enactment of such legislation was made very difficult, although not absolutely impossible. It further provided for giving to the cities a liberal grant of powers, sufficient to enable them to apply their own remedies. In short, the program provides for a city clothed

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with sufficiently broad and general powers to discharge the duties committed to it. In it is vested power

> to acquire, hold, manage and control property, perform and render all public services and all powers of government, subject to such limitations as may be contained in the constitution and laws of the state, applicable either to all the inhabitants of the state or to all the cities of the state.

This is a distinct departure from existing conditions in most states, where cities are given specific grants of powers and are constantly compelled to resort to the state legislature for such additional authority as may be demanded by new conditions.

The program is based upon the theory that good city government depends not only upon a proper form but equally upon a proper determination of the position of the city and upon the ability of the municipal citizen to decide municipal questions on their merits. Hence the careful definition of municipal legislation; the grant of the broadest possible powers and the provisions requiring the separation of municipal elections from state and national elections and the nomination of candidates by petition. The latter practice prevails in a few states; but in a great majority a premium is placed on party nominations, and the candidate and the voter of the regular party have important advantages over the independent candidate and voter. For instance, in Pennsylvania the law gives parties the right to nominate by a certificate signed by the presiding officer and the secretary or secretaries of the nominating convention; all the candidates of one party are placed together in one column under a single designation, and the party voter can, by placing an X at the head of the column, vote for every candidate in it. On the other hand, the independent candidate can get on the official ballot only by securing the signatures of two per cent of the voters of his district, and his name is placed in a column by itself; and the independent voter must mark separately each candidate for whom he votes. Under the provisions of the program, each candidate is placed on a parity with every other candidate, and each voter is on an equality with every other voter. There are no party columns or designations; each man

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must stand on his personal merits. This is the system which now prevails in England; but in the United States it is practically non-existent save in a modified form in a few states.

The right of a city in its public places is declared by the program to be inalienable, except by a four-fifths vote of all the members elected to the council, approved by the mayor; and no franchise or right to use any such public place may be granted for a longer period than twenty-one years. This is a recognition of the principle, now becoming quite generally accepted, that municipal franchises must be owned by the city and that each city must have the power to determine whether it will control or operate them. It is not for the state to determine what the policy of cities shall be in such matters; they must have the power and liberty to decide for themselves, subject only to such limitations as the general welfare of the state demands.

An elaboration of this policy is to be found in the provisions relative to the indebtedness of municipalities. When a debt has been incurred for the purpose of a municipal undertaking from which the city derives a revenue sufficient to pay all costs of operation, interest on the bonds and a sinking fund which will pay the bonds in twenty years, such debt, it is provided, shall be excluded from consideration in determining when the debt limit fixed by the constitution will be reached.

The large borrowing power thus insured, the large powers of taxation and the large governmental powers, including those over street franchises, make it certain that the cities will, if the program is adopted, have all the facilities necessary for their local development, while the control which the state may exercise over cities through its executive and its administrative officers makes it equally certain that the cities will not be able to make use of their large powers contrary to the best interests of the state as a whole. In respect to this latter subject the basis of the program is the substitution of administrative for legislative control. To quote the words of Chairman Deming:

> Let the municipal corporation, therefore, be clothed with ample governmental power to satisfy these needs. Let the legislature

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grant these powers once for all. Application to the legislature for additional governmental powers will then be unnecessary. If the city is granted these powers, its citizens must be granted also the authority, subject only to limitations applicable to all cities of the state, to devise their own methods and adopt their own agencies for the exercise of these powers. The legislature will then have neither occasion nor excuse for interfering with the substance or the detail of the local administrative methods. This eliminates legislative interference from the municipal problem so far as the city is concerned with its local needs and makes the city a self-governing community — compels it to be such. Does any one doubt that the citizens of a municipality under these circumstances, free to rely on themselves and unable to secure any help save from their own patriotic efforts, would fail to become a self-governing community with an efficient, responsible, well-ordered administration adapted to the local needs . . . ? When the state delegates to the municipal corporation the duty of administering a general law within its corporate limits, the city, as an administrative agent of the state, is properly subject to state supervision, but it is administrative supervision, not legislative. The appropriate central state administrative department should be given the requisite authority to compel the satisfactory carrying out by the municipality of the state policy, *e.g.*, a state board of civil-service commissioners to enforce the observance of civil-service laws. On the other hand, the municipality, when it is put to great expense for the general benefit in carrying out the state policy, may rightly be reimbursed by the state, *e.g.*, in New York the locality is repaid from the state treasury a large share of its expenditure in executing the general state policy as to education.

Practically all the principles embodied in the constitutional amendment are to be found in the proposed municipal corporations act, although in a somewhat different form. The reason why the committee proposed two instruments has been partially explained. The prospects are that the act will be generally adopted before the constitutional amendments, but the adoption of the latter will be much more permanent. Taking my own state, the legislature could enact into law the municipal corporations act by a majority vote in each house and with the approval of the executive; but in the next session, which meets two years later, or even in the same session, the act

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could be repealed by a majority vote with executive approval, or by a two-thirds vote without it. The constitutional amendments, however, would have to be proposed at one session, passed by a majority in each house, then advertised in every county in the state; then introduced and passed at the next session of the legislature, two years later, advertised as before and then submitted to the electors of the state. The amendments could not be repealed, however, except by a similar process.

Nevertheless, the adoption of the municipal corporations act will pave the way for the amendments and make the adoption of the latter easier.

The act provides for a city council with a single chamber, the members of which are to be elected on a general ticket; but cities of 25,000 or more inhabitants are empowered to draft their own charters and to provide for a combination of district and general representation. The term of councilmen is fixed at six years, one-third retiring every two years, and former mayors are given a seat and a voice, but no right to vote.

These provisions represent a somewhat radical departure from the system in vogue in most cities. They were suggested and made necessary, however, by the theory underlying the program, namely, the organization of the city to promote direct and positive responsible action and to eliminate the checks and balances which have heretofore formed so conspicuous a part in our frames of local and state governments. The election of the members to represent the whole city, rather than small, arbitrarily determined districts, is essential if we are ever to have a higher grade of municipal legislation. So long as we have district representation, we shall have ill-considered, selfish enactments, in which the interests of the city as a whole will be sacrificed to the interests of the wards or districts. Through the method proposed logrolling with its attendant evils will be eliminated, and the inauguration of great municipal projects for the benefit of the whole community will be made easier and more expeditious. A six years' term will

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aid in the same direction and will result undoubtedly in the selection of a higher grade of men. American city councils are now on so low a grade because men are elected from small districts which are easily controlled and because the term is so short (usually two years) that the average elector feels that the city cannot be very seriously injured in such a time, and that if a mistake is made it can soon be corrected.

The mayor's term of office is fixed at two years, and he is elected at the same time as one-third of the council. The municipal elections are to be held on a separate day from state and national elections, so that municipal issues may be considered separate and apart from state and national politics. By means of this separation and the reduction in the number of elective officers, it is the thought of the committee that electors will give more attention to local matters, and exercise more care in the selection of officials. Under existing conditions so many local officers are elective that it is quite impossible for the average elector to discriminate, and he is forced to fall back upon his party for information as to a candidate's fitness and qualifications. To illustrate, in the election held in Philadelphia, in February, 1902, each elector was called upon to vote for a city solicitor, six magistrates, a select councilman (in one-third of the wards), from one to six councilmen and three school directors in each ward, a board of three election officers and an assessor of voters. As there were four sets of magisterial candidates and at least three and in many cases four and five sets of candidates for all the other offices, the task of selecting the right names to vote for was no easy one. In the election of November, 1898, each elector in Philadelphia was called upon to vote for governor, lieutenant-governor, secretary of internal affairs, two judges of the superior court, a member of Congress; a state senator (in one-half of the districts), one or more members of the state house of representatives, a district attorney, a recorder of deeds, a clerk of the quarter sessions and a coroner. Last November he was called upon to vote for nearly as many officers. Is it any wonder that the average voter, under such circumstances, sticks

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pretty close to his party and votes a straight ticket? In the last instance, the elector had to determine by his vote national, state and local questions and to choose among a large number of candidates. The grounds for the committee's recommendation separating elections and reducing the number of elective officers becomes obvious on a little reflection upon these facts.

As a necessary corollary to the provisions about elections, the program does not establish fixed terms for the subordinate officers, who hold office during good behavior, after appointment upon the basis of merit, to be determined wherever practicable by competitive examination. The mayor may remove a subordinate for reasons other than political, although the removed official must be given a statement of the reasons in writing.

In submitting its preliminary report, the committee said:

> We are fully aware that our recommendations do not constitute the last word on the subjects with which they deal. Municipal government in this country offers such diversity of local conditions that an attempt to frame a general charter is certain to violate some local traditions. We realize that good government is not to be achieved at a stroke; nor do we exaggerate the importance of the form of governmental organization as a factor contributing to this end. Civic advance in general and municipal efficiency in particular are the result of a combination of forces of which higher standards of public opinion and lofty civic ideals are the most important. The form of governmental organization is to be judged by the ease and readiness with which it gives expression to these forces. In the Constitutional Amendment and Municipal Corporations Act your committee has endeavored to give to the city such a position in the political system of the state and to provide it with such a framework of government as will give the widest possible freedom of action to every city in providing the details of its own organization and in the determination of its local policy.

That the committee has accomplished its object so far as the form is concerned, is apparent upon study and reflection. That it will accomplish its other and greater object of bringing to the attention of the American people living in cities the need for reformation along the lines of municipal reorganization, now seems quite possible, if we may be permitted to judge

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from the reception given to its report and from the discussion which its publication has aroused. While neither the corporation acts nor the constitutional amendments have been adopted in their entirety, nevertheless they have been widely used alike by charter commissions and constitutional conventions. Their influence can be directly traced in the recent constitutions of Virginia and Alabama and in the latest revision of the charter of Greater New York, to mention only a few of the more notable instances. Some of the most important principles have been embodied in these and other similar instruments, and it is the judgment of those who are qualified to speak that the program has been influential in moulding the conclusions of charter revisers throughout the country.

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THE ORGANIZATION OF LOCAL GOVERNMENT IN SCOTLAND.

IT is somewhat remarkable that the recent growth of interest in the organization of local government has not hitherto produced any study of the administration of the subordinate partners of the kingdom of Great Britain and Ireland. There are many text-books and innumerable magazine articles on English local government, but the student who desires to know something of the institutions of Scotland or Ireland must dig the information piecemeal from the dryest of dry legal text-books, or from government reports and returns. Englishmen and foreign observers alike seem to assume that the English system extends over the whole of Britain, an assumption which, when made by a popular novelist, leads occasionally to somewhat ludicrous results. A recent writer of detective stories gave a thrilling account of a coroner's inquest in Glasgow, quite in ignorance of the fact that the coroner is a purely English official, and unknown beyond the border. The truth is that although England, Scotland and Ireland have only one legislative assembly, yet their local institutions differ quite as much as do those of different members of the United States. There are, for example, no district councils in Scotland; their functions are discharged partly by the county councils and partly by the police burghs. The educational system of Scotland is far ahead of that of England. The aldermen in an English town, and the bailies in a Scottish have little resemblance to each other. These differences seem never to have been observed either by Englishmen or by foreigners; and Scottish students of law or economics have been so engrossed with purely abstract speculations on the respective functions of the state and the individual or the proper definition of wealth, that the study of the living and concrete institutions at work before their eyes has been neglected by them also. It is to be

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hoped that Mr. Carnegie's gift may enable the Scottish universities to remedy this defect and to find room for the scientific study of local administration. Meanwhile the following notes may serve to show what are the most notable features of the local institutions of Scotland.

The directly elected bodies in the Scottish system are four: burgh councils[1]; county councils, with the semi-subordinate district committees; parish councils; and school boards. The place of the English urban-district councils is taken by a special class of burghs, known as police burghs, and that of the rural-district councils by the district committees. The parish councils are quite different from the English bodies of that name; they administer the poor law, corresponding in fact to the English boards of guardians, and therefore exist in both town and country.

I. THE BURGHS.

Burghs are of three classes, *viz.*, royal, parliamentary and police. Royal burghs are the ancient historic towns of Scotland, created by charter before the union of the parliaments. Many of them still possess considerable remains of their burghal landed estate, which is known as the "common good." Dunfermline, for example, receives about one-sixth of its total revenue from this source, having been fortunate enough to find coal beneath the land of which the common good consists. Up to 1833 these burghs were governed under their charters, and almost each one had a different "sett," or constitution; speaking generally, however, the governmental organs were self-perpetuating bodies (*i.e.*, the old council elected the new one) and were undoubtedly very corrupt. In 1833 the first reform act was passed, embodying a constitution which is not substantially changed to this day.

The governing body in a Scottish royal burgh is now the provost, or lord provost, bailies and council. The council

[1] This word is pronounced in the same way as the English "borough"; its peculiar spelling gives the opportunity of forming a rather useful adjective "burghal."

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varies in number according to the population of the town: in Glasgow there are seventy-seven members, in Dundee twenty-eight; while in Pittenween, at the other end of the scale, there are twelve, and in Earlsferry (population about 300) nine. The councillors are elected by the parliamentary electors (*i.e.*, householders and permanent lodgers) with the addition of women and peers who would be qualified as parliamentary electors but for their sex or rank.

To some extent, therefore, woman suffrage already exists in Great Britain. It is the opinion of some investigators that its working is not satisfactory, — that the women voters are much more apathetic and less intelligent than the men. One may wonder whether those who hold this opinion do not unconsciously compare the women, not with the real, but with the ideal, male voter; for a considerable experience of canvassing has convinced the writer that the intelligence and interest with which the average man regards politics, at all events municipal politics, are not of a very high order. But it should be noted that the women who receive the vote under the British system are precisely those who are least likely to be influenced by the modern movement for the education and enfranchisement of their sex. They are — with the exception of some few professional women — elderly widows and spinsters, to whom the proceedings and policy of town and county councils are a complete mystery, and who have, too, the exaggerated shrinking from "going among a lot of men" which was characteristic of the women of mid-Victorian Britain. The younger, better-educated and intellectually more independent woman is rarely qualified for the municipal franchise; she lives in her father's house and cannot receive the lodger vote. All married women are of course disqualified, save in the rare instances where a married woman occupies property in her own name. This is of importance, not only with regard to the vote itself, but as deciding the eligibility of married women for the membership of certain bodies.

Every large burgh is divided into wards; in a small one the council is chosen by the body of the electors at large. Any

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male elector may be a candidate, but women may not sit on town (or county) councils. There is no restriction of the candidate to the ward in which he resides. Any candidate may stand for any ward, and thus the slums of a Scottish city may be represented by an illustrious citizen residing in the West End. Elections are by ballot, and there are few complaints of corruption.

Imperial politics enter very little into Scottish local affairs. Thus a Conservative (or Liberal Unionist) sits for every one of the seven parliamentary divisions of Glasgow, but its very popular lord provost is a Liberal who might even be called a Radical. In Liberal Dundee, on the other hand, the head magistrate is a Unionist. Unfortunately this desirable state of things is not found in Edinburgh. There, during the last elections, one candidate was attacked by his opponents as a pro-Boer and lost his seat. But political passions run high in Edinburgh, and municipal problems are not so pressing in that centre of legal and academic learning as in the industrial towns of Glasgow and Dundee. So far as can be learned from interviews with the councillors of one or two representative burghs, the factors deciding the election of candidates are in the larger places really questions of local politics, — the pros and cons of expenditure and economy, the desirability or dangers of municipal trading, — while in the smaller towns the issues are more often personal.

The social position of the councillors is as a rule neither very high nor very low. In Paisley, for example, the bulk of the council consists of the smaller shopkeepers ("merchants," in Scotch phraseology), but among the members are also two manufacturers of high standing in public life, and two "tradesmen," or artisans. The professional class is but little represented; the reason for their absence is to be found in the fact that they are more closely bound by the ties of their calling than are the business men. A doctor or lawyer cannot leave his patients or clients to subordinates; but a draper or grocer, whose business is established and no longer needs his constant presence, is relatively free to occupy himself with civic affairs.

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This is perhaps one reason why the municipal standard of Edinburgh compares unfavorably with that of Glasgow. In Glasgow business men of the highest character and standing, forming the best class of the community, are eager to enter the council. In Edinburgh, the middle and upper middle classes are mainly composed of professional men, — lawyers, doctors and teachers; these cannot undertake the arduous work of municipal administration, and therefore it falls into the hands of men of a lower type. But matters are said to be improving, and it is not invariably the fact that professional men are absent from municipal government; several doctors have sat on the Glasgow town council. The workingmen candidates are often strongly influenced by socialism; they enter the councils with exaggerated and unreal schemes of reform. But frequently, when sobered by the responsibilities of office, they become valuable members.

One-third of the council retires annually in rotation, and if the town is divided into wards, one member retires in every ward. Casual vacancies are filled by coöptation; in England, on the other hand, by-elections are held. The *personnel* of the councils changes, in fact, very slowly; it is common to find men who have served for a dozen years in succession.

Every three years the council elects from among its own number a provost, whose position (save that he holds office for three years and not for one) is very similar to that of the English mayor; that is to say, he is rather an ornamental than an administrative head. He presides at meetings of the council, and represents the burgh in its corporate capacity. He receives royal and other distinguished visitors, despatches telegrams of congratulation and condolence, and is expected to take a leading position in the life of the town, to preside at public meetings, open bazaars, *etc.* An able and energetic man may, as provost, be a force in the administration; the man of an opposite type is likely to be a mere figurehead. As the office is looked on as an honor, it is rarely filled twice by the same man.

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Inferior in dignity to the provost are the bailies, or magistrates, who are often mistakenly described as the Scotch equivalent to the English aldermen. But there are many distinctions between bailies and aldermen, both in method of election and in official duties. The former are chosen from among the members of the council, do not vacate their seats as ordinary members on elevation to the magistrates' bench and hold office only till the dates of their retirement in due course from the council. But the English aldermen are elected for six years, may be chosen from without the council and, if selected from among the members of the council, must vacate their seats as ordinary members, thus frequently necessitating the holding of supplementary by-elections. Moreover, when elected, an alderman has not necessarily any further duties than those of an ordinary councillor, though as a matter of fact the chairmen of important committees are very generally aldermen. The bailies, on the contrary, have very definite duties : they sit as police magistrates in the burgh police court, and act also as a licensing bench. They are, in fact, unpaid elected magistrates, whose election, however, is indirect.

In some towns a member is appointed for three years to have charge of the finances of the council. He is entitled the treasurer and is *ex-officio* convener, or chairman, of the finance committee. In Edinburgh Treasurer Cranston's yearly report to the council has a strong likeness to a budget speech.

In addition to the elected members we find in five Scotch cities one or two appointed members of the council. It is characteristic of British institutions to retain in the midst of their democratic organization curiously picturesque links with the past. And so it is pleasant to discover, sitting on Glasgow's most modern and progressive council, two members nominated by strange mediæval corporations which still drag on a shadowy existence, though real power has long since passed from them. The Lord Dean of Guild is appointed by the Merchants House, and the Deacon Convener by the Trades House. The former, in addition to serving as an ordinary member, presides over the Dean of Guild Court, which has power to regulate building

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operations in the city. It is certainly an anomaly that the appointment to so important a post should be made by what is now practically an association of private individuals; but as with many other anomalies in British institutions, the actual result is entirely satisfactory. In Aberdeen the Dean of Guild is appointed by the Guildry; in Edinburgh, the Dean of Guild and the Deacon Convener are appointed by the Convenery and the Guild Brethren respectively.

All the councillors serve on committees, in which the details of administration are discussed, and which usually report to the council at a full meeting. Thus in Dundee we find committees bearing the following names: Works, Sanitary, Police, Recreation and Cemeteries (a gruesome combination), Markets and Baths, Water and Gas, Libraries (on which sit several coöpted members, including a woman and a clergyman), Tramways, Finance, and Lord Provost's. The system of assigning members to the committees varies in different towns. In many the Lord Provost's committee chooses the members of the other committees. In Edinburgh one member from each ward serves on each committee, — a bad system, it is said, which accounts in some degree for Edinburgh's present state of heavy indebtedness; for the member tends to identify himself too exclusively with the interests of his own ward, and to forget his duty, as a representative of the city at large, of keeping down expenditure.

Every council is required to appoint a certain number of paid officials, many of whom have a permanent tenure of office. Of these the first is the town clerk, who in a royal burgh holds his office *ad vitam aut culpam*, a legal phrase which practically means that he can be dismissed only when proved guilty of criminal negligence by an action at law. He has charge of the legal business of the council, sends out notices of meetings and prepares the agenda. Not infrequently he is called on to prepare special reports on important questions, and thus he may to a considerable extent direct the policy of the council. In Edinburgh, the town clerk's report on the telephone question and on the conditions under which an agreement should be

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entered into with the telephone company, practically decided the course which the council ultimately adopted.

Next comes the chamberlain, who is a paid official, working side by side with the treasurer. He has charge of the details of finance. Both he and the collector are required to give security for the due performance of their duties. He holds his office at the pleasure of the council, but generally continues in one position for a long term of years.

The towns which manage their own police, now only thirty-one in number, are required to appoint a chief constable, whose appointment must be approved by the Secretary for Scotland, and who can be dismissed only with the joint consent of the provost and the sheriff (*i.e.*, the resident judge) for the county. The police committee is bound to leave all details of administration to him, such, for example, as engaging and dismissing constables, and may only lay down general regulations for police administration.

A fourth official is the surveyor, whose function is to take charge of the roads; but some of the smaller burghs hand over the care of their roads to the counties.

Every burgh is also required to appoint a medical officer of health (who must hold a diploma of public health) and a sanitary inspector. These officials can be dismissed only with the sanction of the Local Government Board for Scotland. Such provisions for permanent tenure of office in the case of the health and police officials are strengthened by the fact that the central government gives a grant in aid of police and health expenditure, which may be withdrawn if a satisfactory standard of administration is not reached. Practically these officials are put in a very secure position; they feel themselves to a large extent agents of the central government as well as of the local bodies, and therefore they can urge reforms on an unwilling council with much greater freedom than would be practicable were they entirely dependent on its good will. In one small burgh lately, some property belonging to the town had got into a very insanitary condition, and the medical officer at last threatened to complain to the Local Government Board unless

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the council remedied the defects. Such a determined course of action would hardly have been adopted if the medical officer had not held his position by a secure tenure.

The relations of the two health officials to each other are rather interesting. In England the sanitary inspector is definitely subordinate to the medical officer. In Scotland the theory is that they are independent, but are to give each other "mutual help and assistance." As was to be expected, the system of having two heads to what is really one branch of administration has not worked well. In very few burghs in Scotland do the two health officials work harmoniously together in sanitary matters, and considerable disturbance has arisen from this cause. It has even been suggested that the recent epidemic of smallpox in Glasgow might have been stamped out earlier had the coöperation between the two departments been more complete. Each town naturally believes that personal jealousies are the cause of the friction, but it is almost certainly the effect of a badly framed regulation.

Besides the officials thus far mentioned, others may be appointed, and a large city usually has its gas manager, its electrical engineer, its tramways manager, besides hosts of subordinate clerks and inspectors. It also employs many workmen of a lower grade, — carters, street cleaners, tramway drivers, conductors, *etc.* The appointment of these is generally left in the hands of the permanent officials, although there are occasional complaints of the interference of the councillors for corrupt purposes. Still it may be safely said that municipal administrators in Scotland seldom use their power of patronage to secure electioneering advantages. In Glasgow there has been projected (and possibly now exists) a union of all the municipal employees for securing better conditions of labor, and nearly all the large Scottish towns insert "fair-wages" clauses in contracts, *i.e.*, bind the contractors to pay the recognized or trade-union rates. It is the special care of the workingmen members of the council to see that such clauses are inserted and observed. But these movements, although they may, if not carefully watched, lead to corruption, seem at

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present to be conducted in a quite legitimate fashion, and to be only the perfectly fair attempts of the working classes to insist that public bodies shall set as high a standard in their conditions of employment as the "best" private firms.

We find, then, that town government in Scotland is carried on mainly by the committee system. The council, working by means of the committees, is all-powerful, and tends to consolidate every branch of administration in its own hands. But the inconvenience of government by committees is lessened by the plan of having a permanent official in charge of every branch of administration: to the health committee is attached the medical officer of health, to the law committee the town clerk, to the streets committee the surveyor. These are all appointed by the town council, and, save where the sanction of a central department has to be obtained (and in the case of the town clerk), may be dismissed at its pleasure. The permanent officials are responsible to the committee for the details of administration, and they appoint and dismiss the subordinates. This course is insisted on by the law in the case of police management and is carried out in practice in all other departments.

This machinery works very efficiently whenever a strong committee and a strong permanent official are engaged in the same branch. Glasgow's reputation in health administration was first gained in the days when she had an exceptionally able and enthusiastic man as medical officer, backed up by an equally enthusiastic convener of the health committee. There is no tendency whatever to exalt the provost at the expense of the council. But the system has a weak point. The various departments in a large city tend to get out of touch with one another. In Glasgow the workmen of two departments actually came to fisticuffs last year, and although the incident was ludicrous rather than serious, it indicates a looming danger. If different policies be adopted, for example, by the sanitary and the housing departments, considerable difficulties may arise. It did happen in Glasgow that the tramway department, in the person of its conductors, was sued before the law courts

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by another department, the police, for permitting overcrowding of tram cars. And the housing department for many years held property which could have been condemned as uninhabitable under the by-laws of the sanitary committee.[1] The proceedings of committees are reviewed by the whole council, but unless the difference of policy has become marked, the recommendations of each committee are passed without special consideration, and the separate departments may continue to act on different lines. A careful observer of Scotch municipal matters informed the writer that in his opinion it would become necessary in the future to appoint a permanent superintending manager of all the corporation work, — an official who would have the same position in relation to the council that the permanent heads of departments have in relation to the respective committees. He would be, in short, a municipal general manager. This is by no means at present a question of practical politics, but the opinion is not without its interest, as indicating the direction in which matters are moving.

The organization of a royal burgh has now been described. Its powers and duties are laid down in a long series of acts of Parliament, and the cost of these statutory functions is defrayed out of the rates. But in addition royal burghs existing under a charter have certain powers which are not statutory. A royal burgh may put its "common good," or corporate property, to any use which is for the advantage of the citizens, and need find no specific warrant in acts of Parliament. The common good often keeps up the parks, supplies music and is largely used for entertainments in honor of distinguished visitors, for the celebration of important national or civic events, for donations to charities, *etc.* In Glasgow, city churches are supported by the common good; Edinburgh maintains an observatory and pays a town astronomer; its common good also bears the cost of the famous one o'clock gun. The money borrowed for Glasgow's tramways is secured on the common good and not

[1] The property was of course acquired to be destroyed; a full account of the proceedings of the Improvement Trust or Housing Department will be found in Bell and Paton's Glasgow.

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on the rates. In short, the common good conveniently provides money for many purposes to which the rates could not be applied unless a private act of Parliament should be obtained.

The part of the administration pertaining to the common good is commonly known as "municipal" or "corporation" work, while that part, by far the largest, undertaken under statute and defrayed from the rates is known as "police" business. The term "police" has a much wider significance in Scottish than in English law. Besides the management of the constabulary, it comprises drainage, in some cases water supply, street cleaning, public health, lighting, provision of fire engines, *etc.* In fact, it includes practically the whole work of keeping the town in a fit state for its inhabitants. In some cases, as for example at Dundee, the corporation managing the common good existed for many years, side by side with the police commissioners, who were responsible for the police administration of the town. The usual inconveniences of a multitude of local bodies resulted, and it became common for the corporation to act as police commissioners. But the business of the two bodies, though managed by the same men, continued for years to be regarded as distinct, and to be regulated by different standing orders. The councillors when sitting on one day of the week as police commissioners could not transact business, no matter of what urgency, belonging to them in their capacity as corporation. It had to wait until the day on which they met as the corporation. These anomalies have now been nearly all abolished; the municipal and police management is quite consolidated. The town council has entire charge of both municipal and police matters and can transact business belonging to either branch at any meeting. But the old distinction has left some traces in various customs and phrases, and appears especially in the methods of account keeping. Edinburgh still issues one volume of corporation or municipal, and another of police, accounts.

Parliamentary burghs are few in number and obtained their burghal constitution in a curious fashion. The custom of

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applying for a charter of incorporation for a populous place, which still prevails in England, fell into disuse in Scotland after the union of the parliaments. No new burghs were created for over a hundred years; but there grew up many new towns in the course of the industrial development of the beginning of the last century. When the constitution of the royal burghs was reformed by an act of 1833, the names of twelve such towns, which had in the previous year obtained the privilege of sending representatives to Parliament, were placed in a schedule to the act; they were to be administered in the same manner as the royal burghs, and were known as parliamentary burghs. Among them are such important places as Paisley, Leith, Hamilton and Airdrie. Their constitution differs from that of royal burghs only in a few unimportant points. The town clerk of a parliamentary burgh, for example, holds his office, not *ad vitam aut culpam*, but at the pleasure of the council. To these twelve were added in 1868, when the parliamentary franchise was again reformed, two more, making in all fourteen parliamentary burghs. But very frequently they are not distinguished from the royal burghs.

The crisis which created the parliamentary burghs could not be expected or desired to recur. And yet the growth of population caused by the new industrial conditions at the beginning of the last century made it highly desirable that a cheap and convenient method of obtaining town government for new communities should be devised. The result in Scotland was the establishment of an exceedingly simple method of erecting populous places into burghs. Briefly the procedure is as follows: On petition of the inhabitants of a populous area, the sheriff takes a census of the inhabitants, and if there are more than 800, a poll of the householders follows on the question whether a police burgh shall be erected or not. If the poll is favorable, the sheriff defines the boundaries, declares the place a police burgh and proceeds to hold the first election of councillors. This very simple procedure has dotted Scotland with police burghs, and has doubtless been of much value in many

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cases. The writer has been informed that a police burgh can be instituted for a little over £20, while to obtain a charter of incorporation in England costs at the very least over £100. But there are defects in the system. In the first place, the limit of 800 inhabitants is, under modern conditions of administration, much too low. Many of the police burghs (few of which are allowed to manage their police, the term being used in the peculiar Scotch sense noted above) are simply big villages, and are quite unable to provide the elaborate machinery necessary for the efficient administration of roads or public health. In the second place, the act has been used for a purpose for which it was never intended. The suburbs of large towns have often been erected into police burghs mainly to escape the heavy taxation which extension of the parent body would have involved, and once constituted, a British local authority is very tenacious of existence. The most noteworthy case is that of Glasgow, which till 1891 was almost surrounded by nine parasitic police burghs. Six have now been absorbed, but Govan, Partick and Kinning Park still continue their separate existence, and add considerably to the difficulties of the city government.

Till recently the governing body in a police burgh was known as the burgh commissioners; now, however, it has been raised to the dignity of a town council. The main distinctions between the royal burgh and the police burgh are these: (1) that a police burgh is a purely statutory body, with no charter and no common good and without power to go beyond the authority conferred on it by act of Parliament; and (2) that its magistrates have no powers for licensing public houses. Its relations to the county also are different, as will be explained further on.

There are in Scotland over 200 burghs, royal, parliamentary and police, but only forty of these have more than 10,000 inhabitants, while seventeen have less than 1000, Earlsferry with a population of 317 being the smallest. This is partly the result of the decay of numerous royal burghs, partly of the ease and cheapness of the machinery for instituting police

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sell within a stated period real estate acquired in the transaction of business, and in order to unload their real estate holdings they frequently make prices that will move the property in disregard of settled property values. The pressure to sell may come from many different directions, — from necessity of meeting maturing obligations, from indisposition of people changing their place of residence to take their property with them or hold it as absentee owners, from philanthropic or superstitious motives, from selfish interests for advertising purposes.

We may also have forced purchases as well as forced sales, with the consequent price above rather than below fair cash value. The forced purchase is found where a particular piece of real property is needed for a particular purpose, — for access to railway trackage, for a drainage outlet, for right of way for ingress and egress, for completing the symmetry of a store building or a fine residence. A part owner of property, real or personal, may be forced to buy or sell to adjust control. In all these cases a monopoly price is exacted which may never again be maintained, and the purchaser may truly be said to have given more than the property is fairly worth. To assess it for taxation at the purchase price would be over-shooting the mark as much as taking the price of a forced sale would be undervaluing the property.

In connection with sale prices as the basis of tax valuations we occasionally meet complications arising out of the difficulty of separating the different component parts of the transaction. For example, A may be the owner of three pieces of real estate, lots 1, 2 and 3, of which two are desired by B. A asks $1000 for each lot, and insists upon selling all three or none. B offers $2000 for lots 1 and 2, and finally compromises by buying all three for $2500. He regards the purchase price of lot 3 as $500, and asks to have its assessment for taxation placed at that figure. Or again, a man may buy a tract of land consisting of several pieces, picking up one at a time. The first he may get at a bargain, though forced to pay a fancy price for the last. Manifestly the fair valuation of the entire

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In nearly all our American commonwealths the revenue system, at least for local purposes, is built up around the general property tax. The law requires, as a rule, the listing of all property, real and personal, tangible and intangible, at its true fair cash value. The law always has a sale in contemplation — yet a theoretical rather than an actual sale. According to the provisions relating to real estate in a statute which may be taken as typical, the property shall be listed "at its fair value estimated at the price it would bring at a voluntary sale thereof where public notice had been given and a payment of one-third cash and the balance secured by mortgage upon the property."[1] In other words, not what a thing has sold for, but what it would sell for under certain conditions, is to govern in arriving at value for taxation. The property to be assessed may never have been upon the market and may have no prospect of changing ownership through sale, or if it has a market price, this may include elements quite abnormal; so that in order to estimate its fair cash value allowance must be made for various factors and different criteria must be applied to find a satisfactory measure of value. What then is the determining factor? To answer this question we must examine analytically a number of factors each by itself that, although conflicting, are constantly set up as the real basis for tax valuations.

1. *Sale.* — If the value of a commodity is its purchasing power, why should not a recent sale fix its valuation for assessment and taxation? The fact that a yard of cloth, a piano, or a city lot has just been bought for a given price is certainly good evidence of value, but does it necessarily fix its value? Property is often disposed of at forced sale — not perhaps at auction to the highest bidder, but yet under more or less duress or stress that impels its owner to sacrifice it for less than it ought to command. The most common forms of forced sale are those by receivers of bankrupt concerns and by administrators of estates for whose settlement the heirs are clamoring. National banks are required by the national banking law to

[1] Nebraska Compiled Statutes, ch. lxxvii, "Revenue," sec. 5.

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VALUE IN TAXATION.

VALUE is concisely defined in standard treatises on political economy as the purchasing power of a commodity. What a thing will exchange for, we are told, determines its value. What it will exchange for in money, determines its price. The older economists tried to distinguish between value in exchange and value in use, and to illustrate their meaning by citing articles which might have little or no exchangeable value and still be highly useful and, *per contra*, articles which might command colossal prices and yet serve no useful purpose. These distinctions, however, have been entirely brushed away by present-day economic writers, who confine the term "value" to what was formerly termed "exchange value" and refer to so-called value in use simply as utility, of which value is the economic measure. Theoretically, all that is necessary to learn the value of an article or service is to put it on the market and ascertain what it will bring either as a cash consideration or in exchange for other articles or services. But in all this we presuppose an absolutely free field of exchange, in which conditions are no more favorable to purchaser than to seller, and a higgling of the market that will bring about a barter on the basis of equivalence of effective utility. Although these conditions are seldom presented in actual life, yet in taxation it becomes necessary to fix as near as may be the relative values of various articles or properties for purposes of assessment, and often without even the possibility of experimental exchange upon the market. The question then becomes a very practical[1] and a very pertinent one, — how and by what standards property values shall be determined in making up valuations which are to constitute the basis of taxation.

[1] This paper embodies observations made by the writer as a member of the Board of Review which passed upon the 1903 assessment roll for the city of Omaha.

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poor-law and school-board matters engage the better class of workingmen. In towns the business men form the vast majority of the councillors, but professional men are occasionally members. Women take part in the management of poor law and education. Most Scotchmen seem to feel it both an honor and a duty to help in the work of their town or parish council, — an attitude perhaps due to the influence of the democratic organization of the Scottish church. But the democracy is ready to delegate its powers to carefully chosen officials.

The permanent official has in Scotland, as a general rule, a very free hand and a very safe position, secured for him in some cases by law, always (save in the case of elementary teachers) by public sentiment. The system combines to a considerable extent the advantages of democratic voluntary government and official paid administration.

The scheme of the various bodies is somewhat simpler than in England. There a rural elector, for instance, must take an interest in the proceedings of parish council, district council (which also acts as board of guardians), school board[1] and county council. In Scotland the district council is lacking, and as the elections for parish council and county council are held at the same time, and there are no by-elections, the voter does not get jaded by too frequent calls on his interest, and some pains are taken to secure good men. The curious constitution of the district committee is remarkably successful.

The weak points of the system are chiefly these : (1) the large number of incompetent small burghs ; (2) the unnecessary complications introduced by the distinction between royal and police burghs, a distinction founded solely on historical accident, and not on questions of administration ; and (3) conversely, the absence of any classification of burghs founded on population. But on the whole the system works well, and it deserves further study.

MABEL ATKINSON.

BRYN MAWR COLLEGE.

[1] The school board is now abolished in England and its duties transferred to the town and county councils.

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own initiative; it is essential therefore that all educational authorities should be represented on it.

The secondary-education committees have a special interest as an example of a body established by administrative regulation, not by statute. The fact that the British Parliament has little knowledge of Scottish conditions wherever they differ from English, gives rise to a certain tendency, of which these committees are the most distinct instance, to replace legislative by administrative control in Scotland.

In addition to the organs of local government thus far described, there frequently exist in the larger towns trusts or commissions for various specific purposes. Thus Edinburgh has its water commission, which is appointed by the town council and the authorities of the suburban districts which lie within the area of supply. It is practically a joint board, and its proceedings have not been characterized by any great success. In Glasgow the Clyde trust, or harbor board, is appointed partly by the town council, partly by the shipowners and by those who are called on to pay special harbor rates. But there is a distinct tendency to do away with these special commissions or boards, and to intrust all matters directly to the council. This holds true even in those instances of municipal trading where the area of supply is far larger than the area of the parent city. Thus Glasgow has never contemplated the formation of a tramway commission, although its tramway system extends far beyond its boundaries and into the territory of other local authorities.

On the whole, local administration in Scotland reaches a very high level of excellence. It is almost completely separated from the demoralizing influence of national politics — save in Edinburgh.[1] On the councils sit men of all classes and of every occupation. County administration is in the hands mainly of the country gentlemen, while in landward districts

[1] Is it a characteristic of capital cities that national issues should enter into and confuse their local politics? And does this tendency appear in Edinburgh, shadow of a capital though it is?

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one or two cases the powers of a lunacy board have been conferred on the parish councils of the larger towns. Thus the parish council of Edinburgh acts as the district lunacy board.

More interesting is the constitution of the secondary education committees, as it seems to mark a step in the transference of educational functions from the small area, the parish, to the large area, the county, which is at present in progress throughout Great Britain. Another point of interest is that the constitution is not statutory, but is fixed by the Education Department. A considerable sum of money drawn from the imperial revenue and to be used for promoting secondary education is handed over every year to the Scotch Education Department. But the latter body does not itself expend the grant. Considering that local management is preferable to centralization, it directs the county councils and chairmen of the school boards in every county to elect a committee, either from among their own members or from outside, and to this committee is confided the work of drawing up a scheme for the distribution of the grant in its own area. The department reserves to itself the power of nominating on each committee one of its own inspectors, who usually acts as secretary. The committee does not make direct provision for the supply of schools. It establishes scholarships and gives grants to various selected schools. In some counties the management of technical education is intrusted to this body by the county council. This is done, for instance, in the county of West Lothian, where one body controls both secondary and technical instruction, and as it works in close coöperation with the school boards, a very complete system of schools, scholarships and evening classes is the result. But such coöperation among the various educational authorities is not attained in many Scottish counties. Six of the biggest burghs have each a secondary education committee of its own, appointed by the town council and the school board jointly, with several members nominated by the governors of endowed secondary schools. The work of this committee is rather to fill up gaps in the educational system than to provide schools on its

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eligible as candidates, and town school boards have usually one or two women members. In Edinburgh a woman is at present chairman of the board.

The officials of the school board are the clerks and the teachers. They all hold office at the pleasure of the board, — the teachers' great grievance. There are frequent complaints of arbitrary and wrongful dismissal, and many attempts have been made to obtain permanency of tenure. Hitherto the only result has been to secure a complicated method of procedure which must be followed if a teacher's dismissal is to be legal. It is worthy of note that the school board has no permanent executive officer responsible for educational management. The members themselves through sub-committees interview teachers and must be personally acquainted with all details. The public-health committee of a county or burgh, on the other hand, rely to a large extent on the advice of their medical officer, and themselves merely supervise and lay down lines of policy. There is no similar official in the case of education. In technical education, however, the organizing secretary occupies a position similar to that of the medical officer. It is perhaps a tendency of *ad hoc* bodies that has not hitherto been observed, to endeavor to be themselves the executive, while general bodies, on the other hand, are merely supervising and consulting authorities, leaving the direct executive power and management of details in the hands of the paid officials. But in the case of the other *ad hoc* body in Scotland, this tendency is counteracted by the provisions laid down by statute, securing in each parish a permanent inspector of the poor, to whom the details of relief must be confided.

V. OTHER ORGANS OF LOCAL GOVERNMENT.

Besides these directly elected councils, the existence of some other indirectly elected bodies must be briefly noticed. Provision for the care of lunatics is made by the district lunacy board, which is composed of representatives of burgh and county councils, several counties being usually combined. In

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The area of the school district is that of the royal or parliamentary burgh and the landward parish, with a few other districts formed for special reasons. In the case of a mixed parish the landward and burghal portions form separate districts; thus there is (or was till recently) both a landward and a burghal school board of Portobello. Unfortunately this originally simple system has become confused by the fact that school-board boundaries are not usually extended at the same time as the municipal boundaries. Thus in Glasgow there are three bodies administering the affairs of the town, — the town council, the school board and the parish council, — and the area of each differs from that of the other two. This confusion adds considerably to the difficulties of the elector in understanding the course of public affairs, and tends to make him apathetic. After all, the amount of time which the average man can spare for taking part in the management of his town or parish is limited, and one of the first requisites for successful democratic government is a simple and easily understood organization.

The districts of the landward school boards are too small for efficient management. A parish may keep up a good elementary school, but it will be difficult for it to make provision for secondary education, and practically impossible that it should do anything for technical education. Accordingly we find that these branches are passing from the school boards to the bodies governing a larger area. County councils now provide technical instruction, expending thereon money derived from the central government, while secondary education is attended to by committees for that purpose whose constitution will be described later on.

Much the same class of men sit on school boards as on parish councils. In fact the writer was assured that in country parishes the two bodies were frequently composed of almost the same men, and that the trouble and expense of separate elections was simply thrown away. In towns it is said the *ad hoc* body does secure the services of men specially interested in education. As in the case of parish councils, women are

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county and parish councils, a candidate for election must be himself qualified as an elector; but a school-board candidate need not be so. He may even be non-resident and may be a member of any number of school boards at once.[1] Moreover, women are eligible for election; and under the wide conditions of choice, married women who have no vote may yet sit on the board. Inquiries seem to show that this width of choice is distinctly an advantage. A man or woman having no connection with the town or parish is not in any case likely to please the electors, while yet it is possible to choose a valuable candidate who, under more stringent regulations, would be disqualified. On the whole it appears that the policy of placing few restrictions on the choice of the electors works well.

But it is impossible to praise the other device peculiar to the election of school boards, *i.e.*, the cumulative vote. Its working is as follows: Suppose five members are to be elected; then each elector has five votes which he may distribute as he pleases, giving five votes to one candidate, or one to each of five or two to one and three to another and so on. The object is to insure the due representation of minorities, and it is certainly attained. Unfortunately the system of "plumping," or giving all one's votes to a single candidate, enables every small group of faddists to elect its own representative, and has led especially to sectarian representation. Though sectarianism does not run so high in Scotland as in England, and does not appear in the actual working of the administration, it puts members on the board who would probably not otherwise secure a seat.

For centuries Scotland has had its public schools in every parish kept up from public funds, and therefore when the new educational system was introduced in 1872, every district was called on to elect its own school board. There are even one or two boards which provide no school, as all the children in their area attend schools in a neighboring town; but still the board must be elected.

[1] In Fife some years ago, a man who was well known for his keen interest in education was a member of five school boards and chairman of four.

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landward councils alone, as noted above. The parish council may not review the proceedings of the landward committee, and within a certain limit (3*d.* per £1 of rental) the latter can exact what money it pleases; but this must be levied and collected by the parish council along with the poor rate.

The head of the parish council is the chairman, who holds office for one year. He presides at meetings, and is also *ex-officio* a justice of the peace for the county. The parish council has charge of the poor law, of registration of births, deaths and marriages, of primary vaccination [1] and of burial grounds. Its principal official is the inspector of poor, who is required to visit regularly the poor in receipt of relief (outdoor relief is much commoner in Scotland than in England). He is appointed by the parish council, but may be dismissed *only* by the central supervising authority, — the Local Government Board. Other officials are the parish clerk, who in a small parish is often the same person as the inspector, and the parish medical officer, whose duty it is to visit the sick poor and to certify that ordinary recipients are not able-bodied; for a distinctive feature of Scotch poor law is that it refuses relief to the able-bodied. Where there is a poorhouse, there will also be a governor, a matron and subordinates; but the poorhouse is less used than the workhouse in England and is generally provided by several parishes combined. It may be noticed, however, that an attempt in the middle of the century to introduce into Scotland the union, or combination of parishes, as the unit for all poor-law administration, failed completely. Only a few combinations were formed, of which most are now dissolved. The reason is probably that parishes in Scotland are on an average nearly ten times as large as in England.

IV. The School Board.

The remaining body is the school board, which has charge of education. In several respects its constitution differs from those that have been already described. In the case of town,

[1] Revaccination is arranged for by the public health authorities.

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boundaries of the municipal wards; moreover, in order to avoid the inconveniences of too frequent elections, the parochial elections are held at the same time as those for town and county councils. Possibly in this manner the way is being prepared for the disappearance of the parish council and its amalgamation with the burgh council.

A noteworthy feature of the parish council is that women are entitled to vote for members and are also eligible as members. There are few women on the landward councils, but the larger burghal councils, Glasgow, Govan, Edinburgh, have usually one or two women among their members, and it has been commonly admitted that after the first strangeness has worn off they do very useful work. A woman is eligible for membership only if she is herself an elector, that is, a householder in her own name. A married woman possessing or occupying no property of her own is not eligible. A prominent woman member in a parish near Glasgow was disqualified recently because by some mistake her house was entered on the valuation roll, from which subsequently the roll of the electorate was made up, as her husband's, not as her own. It is clear that this provision excludes the bulk of women, and especially nearly all married women, from participation in poor-law administration, for which one would imagine that married women would be specially fitted.

The members of parish councils in towns are drawn from much the same class as the members of municipal councils. Landward parish councils contain, however, a larger proportion of workingmen. The superior artisans and the foremen of the neighboring mine or factory are well represented on at least the lowland parish councils of Scotland.

The parish council works mainly by means of committees. In the case of mixed parishes there exists a body bearing the same relation to the parish council as the district committee to the county council. This is the landward committee, which consists of the members elected by the landward portion only, and exists for the purposes of exercising those powers with reference to recreation grounds, libraries, *etc.*, which belong to

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wholly without the area of a burgh, or mixed, lying partly within and partly without a burgh. It is to be observed, however, that because the parishes existed before the institution of police burghs, the term "burgh" in this classification means royal burgh only. Thus the police burgh of Partick is in the parish of Govan, while matters are still further confused by the fact that there is a police burgh of Govan, with a much smaller area than that of the parish of the same name.

The parish was governed up to 1894 by a curiously composite body. In burghal parishes the ratepayers, with a plural vote based on a property qualification, elected some members; while four were nominated by the kirk session (*i.e.*, the ministers and elders) and four by the magistrates. In landward parishes the council was composed of the kirk session, a certain number of elected representatives and all the heritors (or landowners) possessing land of more than £20 annual value. So here again was a primary assembly with membership based on a property qualification. In this case genuine inconvenience appears to have resulted from the unwieldiness of the body. The parochial board (as it was then called) of Old Machar had at one time more than one thousand members. In other cases, where the parish was in the hands of one or two large landowners, the board was too small. The system of plural voting also prevented it from being genuinely representative. Hence considerable relief was felt when, in 1894, the parochial boards were swept away, and parish councils with a simpler constitution were substituted. In some quarters, it is true, the democratization of the body administering poor relief was regarded with a certain suspicion. This has proved to be quite unjustified, as little change in the methods of administration has resulted from the change in the form of the administering body.

The parish council is now elected once in every three years, and each elector has one vote for each vacancy that has to be filled. The area may or may not be divided into wards. If it is so divided, the sheriff has power to alter the boundaries of the parochial wards in order to make them coincide with the

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secretary of technical education, who is practically the executive official for educational work. These officials hold office at the pleasure of the county council, save the health officials, who cannot be dismissed without the sanction of the Local Government Board, and the chief constable, whose dismissal requires the consent of the Secretary for Scotland.

The district committees may if they please appoint separate district clerks, surveyors and health officials. But considerable pressure is brought to bear on them by the central authorities to employ the same medical officer and sanitary inspector as the county; by this means able men are secured who give their whole time to the work. Often the smaller burghs also appoint the same men to act for them; indeed, the requirement that the medical officer must hold a diploma of public health renders it difficult to find a qualified person who is not already in the public service, and there are even cases in which two small counties share the services of the same individual. In road administration, on the other hand, the district surveyor is generally a different person from the county surveyor, and the latter inspects and supervises the work of the former.

III. THE PARISH.

Burghs, counties and district committees perform what one may call the *general* administration in Scotland; they administer police, public health, roads, lighting, technical education. For the specific administration of poor law and educational affairs there exist two additional bodies, the parish council and the school board. The rural, or landward, parish council has, however, certain general powers also. It may take charge of footpaths, may provide recreation grounds, libraries, baths and washhouses. But by far the greater part of its work and the whole of parish administration in burghs is connected with the poor law.

Since the boundaries of parishes frequently cross those of burghs and counties, a parish is either burghal (*i.e.*, urban), lying wholly within the area of a burgh, landward (rural), lying

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system, especially by the public-health administrators. The presence of the county councillors insures a wide view of important questions of policy, and prevents narrow-mindedness and local jealousies; while the presence of the parish representatives secures a proper knowledge of local needs and desires.

But for many purposes, *e.g.*, water supply, drainage and scavenging, uniform administration and uniform rating over so large an area as a half or a quarter of a county is impossible. One village requires gravitation water; another can safely make use of its wells. One sends its crude drainage into the sea; another, on the inland side of the district and draining into a river, requires some system of purification. To meet these difficulties a system of creating special districts has been instituted. The district committee can, for purposes of water supply, drainage, scavenging or lighting, in some cases at its own initiative, in others on requisition from a certain number of ratepayers or from the parish council, mark off a special area and levy a special rate on the inhabitants. Moreover, it can, if it pleases, delegate the details of the work to a local committee, whose members are frequently chosen from the parish council. This system also works very successfully, and the special district gets the benefit of the supervision of the district committee without the deadening effect of homogeneous administration of a large area. Two complaints, however, are commonly made: (1) that when practically the same area is made a special district for different purposes at different times, sufficient care is not exercised in having coincident boundaries, thus giving rise to an unnecessary amount of labor in making up demand notes for rates, and in rate collecting; (2) that the boundaries of special districts are often unfairly extended so as to take in railway lines and large businesses, which if included must pay rates, though they practically derive no benefit from the supply of water or light.

The officials of a county council are the county clerk, whose work corresponds to that of the town clerk, the chief constable, the medical officer of health, the sanitary inspector and the surveyor. To these must be added, in some counties, the organizing

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shown that these precautions were needless. The country gentlemen who are, in virtue of their position, commissioners of supply, are also very frequently elected to the council. In no Scotch county has any alarming fervor of democratic zeal manifested itself; the county councils are as a rule even more staid and sober bodies than the burgh councils, which in the larger towns have complete charge of the police. But though the fears which led to its creation have passed away, the standing joint-committee still manages the police, and its proceedings are in no way subject to the control of the county council.

The second of the semi-independent committees is more interesting, as it is an example of that rare organization, an indirectly elected body which works successfully. It has charge of the public health and road administration of its special division of the county. Each county council when constituted was required to divide the county into suitable divisions, whose boundaries must not cut the boundaries of the contained parishes. In each division the members of the county council sitting for that part of the county, together with one representative of each parish council within the division, constitute the district committee. It is so far an independent body that it has a separate corporate existence, with a common seal and a banking account of its own, but so far dependent that the county council can lay down general rules for its guidance, can revise its financial proceedings and in some cases may receive appeals against its decisions. In practice, however, the district committees, of which there are three or four in each county, work on their own lines subject to no interference from the parent body. About half a dozen counties are not divided into districts, and in them the county council and the parish representatives sit as the district committee for the whole area. In these counties, accordingly, we have the curious anomaly that there is an appeal from the larger body (*i.e.*, the councillors and the parish representatives) to the smaller body, the councillors alone. But this causes no practical inconvenience, as the decisions of the district are generally passed as a matter of course by the supervising bodies; and great praise has been given to the

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give over their police and roads. Therefore every police burgh is a county electoral district, and a member of the county council is elected by the voters, not nominated by the council.

The head of the county is the convener, who is elected for one year. But as a general rule the incumbent holds office for many years in succession, and is generally the leading country gentleman of the neighborhood. There are no county aldermen or bailies.

The work of the county council is all done through committees. In fact, so much is this the case that there are frequently only one or two full meetings of the council in the year, and these are purely formal. There are usually committees on finance, on legal business, on county buildings, on weights and measures and on technical education, and these work in much the same way as the committees of burgh councils, save that their decisions are less often upset by the meeting of the full council. Two committees, however, of unusual interest require to be specially noticed, both being semi-independent bodies.

Of these the first is the standing joint-committee which has charge of the police and has also certain unusual financial powers. When representative county government was set up in 1889, considerable excitement prevailed in Great Britain with regard to socialistic agitation, and considerable trepidation was felt concerning the possible results if the socialists should succeed in obtaining seats in any considerable number on the new councils. Accordingly the government resolved to surround the administration of police with special safeguards in each county. It was provided that this business should be intrusted to a committee, one-half appointed by the council from its own members and the other half by the commissioners of supply, who had managed the police before the reform, and that the sheriff of the county also should have a seat on the committee. It was hoped by this constitution to secure continuity, and to temper the enthusiasm of the new councillors by the moderation and experience of the old commissioners of supply. Subsequent events, however, have

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They manifested the usual defects of primary assemblies, — unwieldiness, the tendency of a few energetic members to monopolize all the power as a general rule, while their proceedings might be suddenly and irresponsibly reversed under a breeze of disapproval. Still, on the whole, it was not so much active dissatisfaction with county management that brought about the changes of 1889 as a feeling that this form of administration was out of harmony with the demands of the age. County matters are now managed by the county council, which is elected by the parliamentary electors, together with women and peers otherwise qualified, once every three years. In counties the system of single-member districts prevails, and the whole council retires at once. The composition of county councils is very stable. There are often only a few seats contested at each election. Imperial politics have no effect whatever. After the reform of 1889 there was at first a considerable mixture of the classes hitherto excluded from county government, — business men and workingmen. It is said, however, that these are now finding the necessary travelling too irksome, and that administration is slipping back into the hands of the country gentlemen. But in Midlothian the last county council contained several lawyers, a builder and one or two business men; and the tenant farmers continue to take a large share in the work.

The relations of the two classes of burghs to the counties are distinctly complicated. The larger royal burghs are quite free from county supervision or administration. The county council of Midlothian has nothing to do with the government of Edinburgh. But the smaller royal burghs are forced or persuaded to amalgamate with the county for police purposes, and some hand over their roads also to the county. In such cases the town council of the burgh designates one of its members to sit on the county council, where he takes part in county police or road administration, as the case may be, but has no vote on other business. The police burghs, on the other hand, are regarded for many purposes (valuation, prevention of diseases of animals, *etc.*) as part of the county, and they also in many cases

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burghs. The very small burghs are quite incompetent for their work: a tiny town of 1000 inhabitants cannot adequately administer public health or keep up its roads. In fact, the absurdity of the system is shown by the fact that many police burghs are much smaller than the parishes in which they stand, although the parish is presumed to be the smallest area of local administration. But by various means the small burghs are being driven into handing over police, roads and public health to the county authorities, so that many of the drawbacks of the small area are avoided by withdrawing the more important functions of burghal government from the control of its council.[1]

There is no class of burghs in Scotland corresponding to the English county boroughs, which are the large towns with a population of more than 50,000. Royal burghs range in size from Glasgow, with 780,000, to Earlsferry, with a little more than 300; the biggest police burgh is Govan (76,000), the smallest Abernethy (623). But there are six burghs, Glasgow, Aberdeen, Edinburgh, Dundee, Paisley and Greenock, whose affairs are not administered under the general law, but under private acts, and they are thus practically in the same position as a county borough. But Leith and Govan are managed under the same law as the smaller places,—a fact which in the former town, at all events, is felt as a considerable grievance.

II. The Counties.

Passing now to the county government, we note that a representative council was established only in 1889. Before that date county affairs were managed mainly by the commissioners of supply,—a body consisting of all owners of land within the county of more than £100 annual value. The commissioners of supply were thus a primary governing body, membership in which was based on a high property qualification.

[1] A very clever picture of municipal politics and personalities in a small Scotch burgh is contained in a recent novel, The House with the Green Shutters. It deals, it is true, with matters as they were some forty or fifty years ago, but conditions have not been completely altered.

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property may not be based on the price either of the first or of the last, or yet of the whole. To allow sales such as these to furnish the standard for assessment not only for the property directly concerned, but also for that adjacent or similar to it, — for all valuations must be relative, — would on one side prevent all equity in taxation, and on the other destroy all stability in assessments.

2. *Offer.* — When actual sales prove not altogether trustworthy, mere offers to buy or sell must be subject to equally deceptive vagaries. That a commodity or a piece of real estate is held by its owner at a certain figure, no more fixes its value than that, when placed on the market, only inadequate offers are made for its purchase. One person might offer only a few dollars for a gold nugget weighing a pound, and another hold a paste diamond for the price of a genuine stone; yet neither would give any reasonable indication of the true value which the assessor aims to get at. Property may be on the market for years without eliciting any offer at all. Yet no one would contend that it had lost its value or that it should be exempted from taxation. The very fact that an offer to buy or sell has failed to ripen into an exchange must be taken to discredit it as the basis for assessing the property, since it proves conclusively that one of the interested parties refused to accept the other's valuation as a proper equivalent.

3. *Cost of Production.* — Cost of production, though closely akin to sale price, is still slightly differentiated from it. The cost of building a house is a good index to value if the work of construction is of recent date, but what it cost to build a house ten years ago, or even last year, is not conclusive evidence of present value. The house may have been extravagantly erected, or it may have been a loss to the contractor. The owner may have put his own labor or supervision into it without including the value of such labor in the cost figures. Some of the construction work may simply have replaced other parts destroyed or discarded. An example in point has come under notice, where a wealthy man, prejudiced against new buildings, bought a residence for $50,000, — a price generally regarded

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as exorbitant, — tore out most of the interior and remodeled the exterior at an additional cost of some $30,000, and then found the property on the assessment roll for only $43,000.

For the taxation of intangible personalty the cost of production basis is out of the question. The cost of producing a franchise is indeterminable, while the cost of procuring it through the usual channels depends entirely upon the methods employed. The cost of producing many articles which are joint products or by-products is likewise elusive, because the cost of each component cannot be separated, nor has the cost any direct influence on market price beyond setting limits below which it cannot permanently fall. Cost of production goes up and down, often changing with the seasons, while assessment valuations are made no oftener than once a year. To adjust the tax to either high or low period would work injustice as much as to go back with valuations to cost prices of long ago years.

4. *Cost of Reproduction.* — As a guide to value, cost of reproduction has the advantage of contemporaneity over cost of production, but it is subject to the same limitations, though in perhaps lesser degree. In this connection the question of insurance affords an instructive sidelight, and the amount of insurance carried upon buildings, stocks of merchandise and personal property is often of the utmost assistance to the assessor in making his valuations. Insurance, where carried in full, constitutes the owner's estimate of the cost of replacement or reproduction, in the event of total loss by fire. Property, however, is usually under-insured and only infrequently over-insured. As a rule the eighty per cent clause operates to enforce insurance at least up to that amount, and it is not to be presumed that the prudent business man will pay premiums on policies in excess of the amounts he may recover for destruction of his goods. But it must always be remembered that insurance gives merely a glimpse at an estimate of value and that the estimate of insurable value depends upon the same factors that are considered independently in computing assessments for taxation.

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5. *Earning Power.* — If our revenue system were based exclusively on income, earning power alone would be the determining factor in taxation. That we rely for the most part on the property tax, emphasizes the fact that we refuse to recognize earning power as the sole test of ability to pay taxes. But no one would for a moment think of disregarding earning power altogether in arriving at property values. The production of revenue or increment, or at least the capacity, present or prospective, to produce revenue, is what makes property salable, unless it be something that ministers to personal gratification. For real estate the rental value is the chief ingredient of value. This presupposes, however, that the property is improved to its full capacity and also that it is devoted to the most profitable use. Unimproved property from which no rents whatever inure must, however, under our system of property taxation, contribute to the public revenues and be assessed at its fair value proportionably to that which is improved. Again the figures given as rental value often include payments not strictly regardable as rent. The tenant may be paying for heat, power, light, water, telephonic communication, janitor service and many other things in lump sums on a bill rendered for rent. Where real estate investments are expected to net a current rate of interest, it is commonly assumed that a piece of improved property is worth so many months' rent; but for such a computation it is plain that the actual rental value must first be ascertained by excluding all items foreign to the idea of rent.

For mercantile and financial institutions, it is always difficult to isolate the receipts properly definable as earnings on investments. The reward for risk incurred in hazardous undertakings must have allowance as a set-off in estimating property values by earnings. The confidence of the public and more particularly of the patrons in the management of a business institution has much to do with the earnings. Confidence in a bank, for example, might be shaken by some outside incident completely disastrous to its earning power, yet without in the slightest impairing the value of the assets. And the reverse

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may happen: a bank with impaired resources may recoup its falling fortunes by a change of responsible management without the addition of a single dollar of new capital. Again, in gauging property values of mercantile concerns for assessment on the basis of earnings, confusion is created by the fact that real earnings are too often hidden. Earnings may be in kind as well as in money, and profits may be distributed through channels other than dividends. Finally, there may be no earnings at all, or even an actual loss, with property values still maintained and still subject to assessment and taxation.

6. *Capitalization.* — The relation of capitalization to the value of the property by which the stocks and bonds are secured is ordinarily direct and proportionate, but still neither the face values of the securities nor yet their market quotations necessarily measure the valuation that should be put upon them for taxation. As every one knows, while capitalization is generally built upon earning power the prices of stocks and bonds can be readily manipulated by various disturbing influences. As there may be hidden earnings, so there may be hidden capital; and there may also be fictitious capitalization based on worthless assets or unfounded promises. In the practical work of assessment for taxation the most perplexing problem presented by capitalization is the determination of the taxable value of a portion of a going concern in one taxing district, as distinguished from other portions outside of the taxing jurisdiction. To cite an example that has come under recent observation: A telephone company doing business in three states was called upon to make return for assessment for city taxation within boundaries that embrace only one of its exchanges, albeit the principal one and the seat of the corporation headquarters. The company contended that, inasmuch as its outstanding securities consisted exclusively of stocks aggregating $1,798,000 face value, bearing six per cent dividends and selling for par on the market, its entire system must be taken to equal $1,798,000 in value. In order to ascertain the part returnable for the one exchange in question its officers

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prepared an appraisement of all the tangible property, of which $300,000 in personal property and $88,000 in real estate was credited to the head office. The remainder, amounting to some $300,000, left after subtracting the value of the tangible property from the capitalization figures, was then distributed along the line in the same ratio, as representing the franchise value. The resulting return for the part of the plant under consideration embraced $378,000 as the total personal assessment in addition to the real estate listed at $88,000. Further inquiry, however, disclosed aggregate earnings for the whole system of $757,000, of which approximately $240,000 came from the business transacted through this one exchange. In earning capacity, therefore, the part to be assessed constituted six-nineteenths in value of the entire system, and the capitalization subject to assessment in that taxing jurisdiction figured out $568,420 instead of $466,000, as its officers would have preferred; while computed on the basis of net earnings, the proportion of the capital properly represented in the main exchange would have been still greater.

Whether mortgages should be considered as important factors in property valuations is decidedly questionable. A mortgage may arise out of many different conditions. It may represent an unpaid portion of the purchase price; if so, it bears no definite relation to the value of the whole property. It may be merely evidence of part ownership or of a different ownership; as such it is a device resorted to solely for the purpose of obscuring title to protect the real owner, in which the stated consideration may be far in excess of the value of the security. A mortgage anchoring a bond issue indicates nothing more than that the property or business involves borrowed capital in addition to that represented by the shares of capital stock. In some instances, too, the mortgage security covers all the capital actually invested, the stocks being pure water. As a general rule, however, it is safe to assume, in the absence of abnormal features, that mortgaged property is worth at least a considerable percentage of value greater than the face of the obligation.

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Conclusion. —From this discussion it might appear that an equitable assessment of property for taxation is an absolute impossibility. But we need have no serious apprehension on that score. No single tax has yet been devised, or is likely to be devised, that will produce automatically a just distribution of the burdens of government. Likewise for the property tax: no one basis of valuation is infallible, but all of them are useful. Not only that, but the one serves to check the other and to offset errors of exaggeration and of depreciation. The most satisfactory assessment of property for taxation will be that made with the fullest knowledge of all the essential factors bearing upon the question of value, while the most defective assessment will be the one that is based upon only one factor to the exclusion of all the others.

VICTOR ROSEWATER.

OMAHA, NEBRASKA.

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THE GROWTH OF FEDERAL EXPENDITURES.

FEDERAL expenditures offer an almost unworked field to the student of American finance. This is due, without doubt, to the comparative ease with which our national government has drawn abundant revenues from customs and excise duties. Yet the burden of federal expenditures is not light, and has shown in recent years a marked tendency to increase; so that the time has long gone by, if indeed it ever existed, when we could afford to neglect this subject.

For the purposes of this article it will be desirable to exclude all the disbursements of the Post-Office Department except the deficits paid out of the federal treasury, since the expenses defrayed from the ordinary postal revenues constitute no burden upon the taxpayers.[1] Then, for different reasons, we shall exclude all payments upon the principal of the public debt. These, of course, are a burden upon the taxpayers, but they show great variation from year to year according to the condition of the federal finances; and would have the effect, if they were included, of vitiating the comparisons that we shall attempt to make of the costs of running the federal government at various dates. By excluding this item the statistics for different years will be made strictly comparable, and this advantage is so great as to justify the omission, important as it is.

I.

It is important first of all to secure a general view of the growth of expenditures since the formation of the national government. The following table begins with the year 1792

[1] Thus for the fiscal year 1900 we shall state the expenditures at $487,713,000, which includes the postal deficit. If the expenses defrayed out of departmental revenue were included, the total would reach $590,068,000.

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because the official reports do not present separately the figures for 1789, 1790 and 1791:

EXPENDITURES OF THE UNITED STATES.[1]

Year.	Ordinary.	Interest.	Total.	Per Capita.
1792	$5,896,000	$2,373,000	$8,269,000	
1800	7,411,000	3,402,000	10,813,000	$2.04
1810	5,311,000	3,163,000	8,474,000	1.17
1820	13,134,000	5,151,000	18,285,000	1.90
1830	13,229,000	1,912,000	15,141,000	1.18
1840	24,139,000	174,000	24,313,000	1.42
1850	37,165,000	3,782,000	40,947,000	1.76
1860	60,056,000	3,144,000	63,200,000	2.01
1870	164,421,000	129,235,000	293,656,000	7.61 (6.80)[2]
1880	169,090,000	95,757,000	264,847,000	5.28
1886	191,903,000	50,580,000	242,483,000	4.22
1890	261,637,000	36,099,000	297,736,000	4.75
1900	447,553,000	40,160,000	487,713,000	6.39
1902	442,082,000	29,108,000	471,190,000	5.96

Even a cursory examination of these figures shows that the history of federal expenditures may be divided into five periods. The first of these extended from 1789 to 1811, and reflects the conditions that existed during the formative period of national finance. The ordinary expenditures steadily increased during the twelve years of Federalist rule, and culminated in 1800; after which the economies inaugurated under the Democratic régime resulted in a somewhat smaller outlay.[3] In a similar

[1] These figures are taken from the Report of the Secretary of the Treasury for the year 1901, pp. 131 and 133. They include the expenditures stated in the first and third columns of each page. They will be found to differ slightly from the statistics given on p. 113 of the same Report. For 1870, 1880 and 1890 the differences are due to the fact that our table excludes the item of "premiums" on debt. For 1840 and 1860 the differences are so slight as to be immaterial. For 1850 there is a difference of $1,404,000 which is not readily explained.

[2] The figures in the parenthesis show the per capita expenditures in specie. Interest payments were always made in gold, but the ordinary expenses are stated in currency values. Accordingly, I have reduced the latter to terms of gold before calculating the per capita outlay. For the fiscal year 1870 the greenbacks were worth 81 per cent of their face value.

[3] Yet in 1809 the ordinary expenditures rose to $7,414,000 on account of unusual outlays upon the army and navy.

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manner the annual interest charge constantly rose until the year 1801, and then slowly declined as Gallatin was able to effect some reduction of the principal of the public debt. Between 1800 and 1810 there was a marked decline in the per capita cost of running the government, although, if our table included the sums applied in reducing the debt, the total burden borne by the people would not show so great a decrease.

Our second period extended from 1812 to 1860. Passing over the unusual conditions that prevailed during the early years of this epoch, we find that in 1820 both the ordinary expenditures and the interest charge had more than doubled,[1] while the per capita outlay had risen almost to the level reached in 1800. During the next fifteen years interest payments rapidly decreased, since the government accomplished the unprecedented feat of extinguishing the whole of the debt. But the ordinary expenditures never returned to their former proportions, and were permanently increased as a consequence of the War of 1812. In every instance in our history the prosecution of a war has entailed a similar result. The total expenditures of the government steadily decreased from 1820 to 1830 on account of reduced interest charges, and the per capita outlay of the latter year fell to the remarkably low level of 1810. After 1830 the ordinary expenses steadily increased, and the per capita cost of government gradually rose, especially after the Mexican War. By 1860 the federal expenditures had risen to $2.01 per capita, or practically the figures for the year 1800. Yet the increase of wealth had been such as to make the relative burdens of the taxpayers decidedly less than they were at the opening of the century. Upon the whole, during the first seventy years of our national existence, the federal government had been administered with remarkable economy, and at an expense that generally was considerably less than two dollars per capita.

The third period includes the decade 1861 to 1870. During the continuance of military operations the outlay of the

[1] Our table shows that interest payments rose only from $3,163,000 in 1810 to $5,151,000 in 1820. But the interest charge for 1812 was $2,451,000, so that the statement in the text represents correctly the results of the War of 1812.

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government reached colossal proportions, but by 1870 conditions had become fairly normal so that one can form some estimate of the results of the war. Our table shows that interest charges had increased by $126,000,000; ordinary expenditures, by $104,000,000; and the per capita outlay, by $4.79 when the figures for 1870 are reduced to a gold basis. In other words, the Civil War had increased by over two hundred per cent the per capita cost of running the federal government, even when, as in our tables, the payment of the principal of the debt is left out of account.[1] And again, as in the case of the two earlier wars, the expenditure never afterwards fell to its former level.

Our fourth period embraces the sixteen years that terminated June 30, 1886. It witnessed the rapid reduction of our debt and a corresponding decline in the annual interest charge. Ordinary expenditures increased but slightly up to 1880, for the growth of pensions was offset by reduced outlays upon the army and navy. As a result there was a decrease in both the total and the per capita cost of government. After 1880 the growth of a large surplus revenue led to an increase of the ordinary expenditures, but this tendency was for some years more than counterbalanced by a reduction of the interest charge; so that in 1886 the total outlay had fallen to $242,483,000, which represented a per capita burden of $4.22. This was the lowest point ever reached by the federal expenditures after the Civil War.[2]

During our fifth period, which extends from 1887 down to the present time, the reduction of interest charges has been too slight

[1] The facts are sufficiently striking to warrant detailed analysis in the following table:

Expenditures.	1860.	1870.
Civil and Miscellaneous	$27,977,000	$53,237,000
War	16,472,000	57,656,000
Navy	11,515,000	21,780,000
Indian	2,991,000	3,408,000
Pensions	1,101,000	28,340,000
Interest	3,144,000	129,235,000
Total	$63,200,000	$293,656,000

[2] In 1877 and 1878 the total expenditures were slightly less than they were in 1886, but the per capita outlay was greater.

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to offset the marked growth of expenditures in other directions; so that there has been a decided increase in the cost of maintaining the federal government. Between 1886 and 1893 the aggregate expenses rose from $242,483,000 to $383,477,000, while the per capita outlay advanced from $4.22 to $5.78. This was due chiefly to congressional extravagance fostered by a large surplus revenue. Then came four years of industrial depression, which produced a succession of deficits and enforced some degree of economy. The total expenditures were reduced from $383,477,000 in 1893 to $365,774,000 in 1897, in which year the per capita outlay stood at $5.11.[1] But then ensued the Spanish War, which has exerted a profound influence upon our finances, as upon other departments of our national life. In 1902 the total expenditures stood at $471,190,000, which represented a per capita burden of $5.96; while the estimates of the Secretary of the Treasury predict an increase of some forty or fifty millions for the fiscal year 1903. Once more we have an impressive demonstration that a war is practically certain to leave behind the legacy of larger expenditures, and that, too, even when it has not entailed a material increase of the public debt or a considerable addition to our pension rolls.

II.

In many quarters a disposition exists to view with complacency the recent growth of federal expenditures. One well-known statistician[2] has assured us that

> the federal government since the Civil War, which marked an exceptional period, has been doing just what a wise and judicious head of a family would do under increasing wealth and resources — keeping pace with environment, making improvements as the wealth of the country warranted, providing for great educational work, and

[1] From 1886 to 1897 the expenditures were as follows:

Year.	Ordinary.	Interest.	Total.	Per Capita.
1886	$191,903,000	$50,580,000	$242,483,000	$4.22
1893	356,213,000	27,264,000	383,477,000	5.78
1897	327,983,000	37,791,000	365,774,000	5.11

[2] Carroll D. Wright, in *Century Magazine*, LXI, 437.

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carrying on extensive and expensive operations at home and abroad, but, nevertheless, increasing the burden of the people to such slight degree that it can hardly be felt.

It is now proposed to invite the attention of the reader to an analysis of the statistics upon which the solution of the question must depend.

The course of federal expenditures during the last forty years is marked by a dividing line at the year 1886, when the outlay reached the lowest point ever known since the Civil War. In 1870 the per capita expense of running the government was $6.80, whereas sixteen years later it had decreased to $4.22. This means that the lowering of the annual interest charge, made possible by the reduction of the public debt, was sufficient to effect a decrease in both the total and the per capita expenditures, in spite of the growth of the outlay in other directions.[1] It is certainly true, as General Garfield contended in 1872,[2] that the *aggregate* expenditures could not decrease indefinitely in this manner, since a point would soon be reached at which the inevitable growth of the public needs would outweigh any further diminution of the debts left by the war. But Mr. Garfield believed that the *per capita cost* of government might decline as population increased, even though the aggregate outlay could not remain stationary. However this may be, it is certain that the burden of the taxpayers in 1870 was excessive, since the per capita expense was more than three times as large as it had been ten years before. It is probable, also, that very few of those persons who view with complacency the recent growth of expenditures would care to deny that the country was benefited by the constant reduction of the per capita charges down to 1886.

[1] The facts may be shown by the following table:

	1870.	1886.	
Pensions . . .	$28,340,000	$63,404,000	
Army and Navy .	79,436,000	48,232,000	
Other	56,645,000	80,266,000	
	$164,421,000	$191,902,000	(Inc. $27,481,000)
Interest . . .	129,235,000	50,580,000	(Dec. $78,655,000)
Total . . .	$293,656,000	$242,482,000	(Dec. $51,174,000)

[2] See Congressional Globe, 42d Congress, 2d session, p. 538.

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The real question at issue concerns the rapid growth of expenditures for the last sixteen years, during which the per capita outlay has increased from $4.22 to $5.96, or something more than forty per cent. It can be decided only by a detailed analysis that will show what has become of the additional outlay, which amounts to $1.74 for every man, woman and child in the United States, or $8.70 for every family of five persons. The facts can be presented in simplest form by constructing two tables, of which the first will show the changes effected between 1886 and 1897, and the second will exhibit the results for the last five years. The first table, stating the expenditures, will stand as follows:

Year.	Pensions.	Interest.	Army and Navy.[1]	All Others.
1886	$63,404,000	$50,580,000	$44,142,000	$84,354,000
1897	141,053,000	37,791,000	69,826,000	117,099,000
	(Inc.) 77,649,000	(Dec.) 12,789,000	(Inc.) 25,684,000	(Inc.) 32,745,000

The increase of $25,687,000 in our military expenditures was due mainly to the creation of our new navy, and calls for little or no criticism. The growth of the various outlays for civil purposes, shown in the last column, averaged less than $3,000,000 for each year and may not have been greatly excessive, although the figures could probably have been reduced by more economical management. The aggregate increase in these two departments was $58,430,000, which was offset in part by a reduction of $12,789,000 in interest charges; so that the net growth of expenditures for the three items was but $45,640,000. Now if the pension outlay had stood at the figures for 1886, the government would have expended but $288,120,000 in 1897, and the per capita charges would have been but $4.02, or a reduction of twenty cents for the eleven years.

It is evident, therefore, that our per capita expenditures in 1897 might have been $4.02 instead of $5.11 had it not been for the growth of pension disbursements by the sum of

[1] From the army and navy expenditures I have excluded the sums spent in improving rivers and harbors, which our Finance Reports assign to the War Department. These improvements are included with the civil expenditures shown in the last column.

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$77,649,000, and our judgment concerning the propriety of the growth of federal expenditures during the eleven years in question will depend upon the views we entertain concerning pension legislation. It is idle to talk about the government's "keeping pace with environment, making improvements as the wealth of the country warranted, providing for great educational work," *etc.*; for all such outlays, with the cost of the new navy thrown in, would not have increased the country's per capita expenses for 1897 over those for the year 1886. It is not the purpose of this paper to enter upon an extended discussion of pension legislation, but two things should be said in this connection. In a speech delivered in Congress on January 23, 1872, at a time when the pension roll called for an expenditure of only $28,533,000, General Garfield said: "We may reasonably expect that the expenditures for pensions will hereafter steadily decrease, unless our legislation should be unwarrantably extravagant." In 1886 the outlay was over twice as large as when these words were uttered, and it is evident that, unless General Garfield's calculations contained an error of over one hundred per cent, the growth of pension disbursements in recent years has been both extravagant and unwarranted. This conclusion will be strengthened if one notes that the legislation which brought about such a result was passed at a time when the federal treasury was groaning under an unprecedented accumulation of surplus revenue that was a direct incentive to extravagant appropriations. How probable is it that Congress would have passed the law of 1890 if it had been necessary to levy new taxes in order to provide ways and means? In any event it is useless to try to conceal the fact that pension expenditure was the cause of the increased per capita outlay in 1897.

We may now examine the second table, which shows the movement of federal expenditures from 1897 to 1902:

Year.	Pensions.	Interest.	Army and Navy.	All Others.
1897	$141,053,000	$37,791,000	$69,826,000	$117,099,000
1902	138,488,000	29,108,000	165,128,000	138,465,000
	(Dec.) 2,565,000	(Dec.) 8,683,000	(Inc.) 95,302,000	(Inc.) 21,366,000

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It will be observed that the outlay for pensions and interest decreased by $11,248,000, while that for all civil purposes rose to the extent of $21,366,000, a net increase of $10,118,000 for the three items. It is evident, therefore, that, if the cost of the army and navy had remained at the figures for the last year before the Spanish War, the aggregate expenditures of the United States would have increased from $365,774,000 to not more than $375,892,000 between 1897 and 1902. This would have given us a per capita outlay of $4.75 in the latter year as compared with $5.11 in the former. That the total expenditures were $471,190,000 is due solely to the growth of the outlay for military purposes. At present our army and navy are costing the country $95,302,000 more than before the recent war, and entail an additional outlay of $1.21 for every person in the country. For 1903 the prospect is that there will be a further increase of these expenditures.

III.

It has long been the boast of Americans that this country has been relatively free from the heavy exactions that militarism has made upon the people of other lands. In 1889 the per capita cost of maintaining land and naval armaments was found to stand as follows in the leading nations of Europe:[1]

Austria . .	$1.99	Germany . .	$2.27	France . . .	$4.16
Russia . .	2.13	Italy	2.56	England . .	4.23

European conditions have not improved during the last decade, so that the people of this country still have some reason for satisfaction over their more fortunate situation. And, when the indirect loss occasioned by the withdrawal of labor from productive industry is taken into account, the comparison results still more favorably for the United States. Yet we have less reason for satisfaction than we had a decade ago, as will appear from the following statistics which show the cost of maintaining our army and navy in recent years:[2]

[1] Schönberg, Handbuch der Politischen Oekonomie (3d ed.), III, 49.

[2] Here, again, expenditures for improving rivers and harbors are deducted from the amounts charged to the War Department.

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Year.	Total Expenditures.	Per Capita.
1880	$43,640,000	$0.87
1890	54,851,000	0.88
1897	69,826,000	0.98
1902	165,128,000	2.09

The facts just presented are designed solely to furnish materials for a comparison of the outlays upon actual military armaments in this and in other countries. They convey no idea, however, of what war has cost and is costing the United States. For this purpose it is necessary to add to the expenditures upon the army and navy the burden entailed by the disbursements for interest[1] and pensions. Even then the figures which are now to be presented will not disclose the whole truth, since we have excluded throughout the important item of payments on the principal of the national debt.

Turning then to the aggregate running expenses chargeable to the account of war, the following statistics are presented:

Year.	Army and Navy.	Pensions.	Interest.	Total.
1870	$79,435,000	$28,340,000	$129,235,000	$237,010,000
1880	43,640,000	56,777,000	95,757,000	196,174,000
1890	54,851,000	106,936,000	36,099,000	197,886,000
1897	69,829,000	141,053,000	37,791,000	248,673,000
1900	172,009,000	140,877,000	40,160,000	353,046,000
1902	165,128,000	138,488,000	29,108,000	332,724,000

And if now the total outlay for such purposes is compared with the entire amount of the federal expenditures, the result will be as follows:

Year.	Total.	War.	Per Cent.
1870	$293,656,000	$237,010,000	80.7
1880	264,847,000	196,174,000	74.0
1890	297,736,000	197,886,000	66.4

[1] It should be remarked that, in 1894 and 1895, $262,000,000 of bonds were issued in order to maintain the gold reserve. Interest on this portion of the debt should properly be excluded from our figures, but the recent refunding operations make this an impossible task. But any error at this point is partly counterbalanced by the fact that we have not included in the military expenditures a sum, varying from $2,000,000 to $3,000,000, expended annually for maintaining the War and Navy Departments at Washington, which the Finance Reports group with the civil expenditures.

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Year.	Total.	War.	Per Cent.
1897	$365,774,000	$248,673,000	68.0
1900	487,713,000	353,046,000	72.4
1902	471,190,000	332,724,000	70.6

Thus it appears that our federal government is, on its financial side, mainly a huge machine for collecting taxes in order to defray the direct and indirect cost of war; so that the people of the United States should not congratulate themselves unduly upon their immunity from the burden which war entails.

As a matter of fact it will probably startle the average reader to learn how little the federal government would cost were it not for war and its consequences. From the beginning of our national existence down to the present day the aggregate civil expenses of the United States have been comparatively small. This fact can be most readily shown by the following table, which gives the per capita charges first for civil expenditures and second for all purposes:

Year.	Civil.	All Purposes.	Year.	Civil.	All Purposes.
1800	$0.25	$2.04	1860	$0.98	$2.01
1810	0.18	1.17	1870	1.19	6.80
1820	0.30	1.90	1880	1.36	5.28
1830	0.30	1.18	1890	1.59	4.75
1840	0.48	1.42	1900	1.76	6.39
1850	0.76	1.76	1902	1.75	5.96

In these figures even the most warlike may find food for reflection. Our national government in 1902 was imposing upon taxpayers a burden that averaged $29.80 for every family of five persons. Of this sum, only $8.75 was needed for all civil expenditures, while $21.05 must be charged to the account of war.

IV.

But it has been contended that such figures as these overlook an important factor, — the growth of the country's wealth. Thus Mr. Carroll D. Wright has argued that wealth has increased even faster than expenditures, so that there is no reason to criticise the policy of the federal government in

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making larger demands upon the taxpayers.[1] With the professional optimism of an official statistician he tells us that the United States has been playing the part of a "judicious head of a family" in increasing its outlay as its income increased. "Statistics," he says, "by leaving out one or two elements, are often used in support of a fallacious argument, when had they been complete the argument could have had no force whatever." In the census figures showing the nation's wealth he finds the proper corrective for complaints of federal extravagance, and with a few dexterous passes of his statistical wand he has no difficulty in making the usual "highly satisfactory" showing.

Mr. Wright's readers would never suspect that he is dealing with data of a most uncertain and unsatisfactory character. He quotes glibly the figures which the census has gathered concerning "the true valuation of all tangible property," and presents tables which purport to show that the total wealth of the country increased from $7,135,000,000 in 1850 to $94,000,000,000 in 1900, while the per capita amount rose from $308 to $1232. Now it is true that the census[2] presents such data as these; but it is true, also, that the statistics have not been gathered by a uniform method of computation, and the results, therefore, cannot be compared for the purpose in question. All that the census of 1890 claimed was that the tables showed "in a general way a continuous increase in the wealth of the nation, *the exact proportion of which cannot be measured.*" The italics are mine, and the words to which attention has been called were intended to caution all students against uncritical acceptance of computations based upon such data. For even *appearing* to countenance such a use of the figures the census has been justly criticised;[3] but although Mr. Wright

[1] *Century Magazine*, LXI, 437.

[2] The figures for 1900, however, are evidently an estimate of Mr. Wright's making.

[3] See letter printed in Eleventh Census, Report on Wealth, Debt and Taxation, part ii, p. 9. Also, more particularly, see the monograph of the American Economic Association, entitled "The Federal Census," pp. 372–391; Mayo-Smith, Statistics and Economics, p. 177.

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must know this, he does not hesitate to put the figures without qualification, before the readers of a popular magazine.

But even as the figures stand, they do not support the conclusions that have been drawn from them concerning the growth of wealth and expenditures during the last decade. Two methods of comparison, obviously, are open to us: either to compare the total wealth with the statistics of total expenditure, or to compare the per capita wealth with the per capita cost of government. When this is done we reach some results calculated to disturb even the most optimistic statistician.

In the first place the figures showing the total wealth and the total expenditures are as follows:

	1890.	1900.	Increase.
Wealth . . .	$65,037,000,000	$94,000,000,000	44.0%
Expenditures	297,736,000	487,713,000	63.8

And then, if one turns to the per capita results, the figures are:

	1890.	1900.	Increase.
Wealth	$1,036.00	$1,232.00	18.9%
Expenditures	4.75	6.39	34.5

Manifestly there is nothing in these tables to modify our conclusion that the recent growth of federal expenditures deserves most serious consideration.

But I am referring to the census statistics of wealth only to demonstrate that, upon any basis of comparison, they cannot be used to contradict the results reached in this paper. In my opinion the statistics are so misleading as to be worthless for our present purpose. The most that can be done is to show that between 1886, the year when the cost of government reached the lowest figures since the Civil War, and 1902, the last fiscal year for which the data are now available, our per capita federal expenditures rose from $4.22 to $5.96, an increase of forty-one per cent. Whether the total wealth of the country grew at an equal rate during the fifteen years in question may be uncertain; but that the per capita wealth increased to any such degree would probably be claimed by no one.

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Turning now to the theory that a larger governmental outlay is justifiable, provided that wealth advances in the same proportion, it may be remarked that such a principle gives us a wrong criterion of the legitimacy of public expenditure. The only adequate defense of any proposed outlay is the benefit derived from it; whether the country can support a particular burden, is a secondary consideration. The first test is always the desirability of the contemplated expenditure; after that question is settled it is time to inquire whether the taxpayers can afford to pay the bills when they come in. The correct principle was finely stated in the constitution adopted by Pennsylvania in 1776, which declared that "the purpose for which any tax is to be raised ought to appear clearly to the legislature to be of more service to the community than the money would be, if not collected."

It is true that, if the per capita federal expenditures must increase, the country will be fortunate if the growth of wealth is equally rapid. But even the fulfillment of this condition, desirable as it would be, would not remove all cause for anxiety. The burden of federal expenditure is not distributed among our people according to the wealth each man possesses, but in proportion to the amount of commodities that he consumes. Every year our federal revenue laws, by placing upon certain classes of people an undue proportion of the public burdens, simply transfer so much money to the pockets of the more favored citizens and intensify all existing inequalities in the distribution of wealth. It is evident, therefore, that any increase in the per capita cost of government involves economic and social results of a serious character; while, upon the other hand, a decrease of expenditures diminishes the intensity of the forces that now make for an unequal distribution. From this point of view, if from no other, we should be led to adopt the theory of President Garfield when he declared that "while the total sum of money expended from year to year must necessarily be greater, the amount per capita ought, in all well-regulated governments, in time of peace, to grow gradually less."[1]

[1] Works of Garfield, II, 4.

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At the risk of wearying the reader with vain speculation about what "might have been," we shall venture to present some figures that show what would have been the course of federal expenditures in recent years if the outlay for pensions could have been kept at the point reached in 1886, and our military outlays had remained at the level attained just before the Spanish War. In this way, more clearly than in any other, can we show where the money of the taxpayers has gone. The statistics, be it remembered, provide for the cost of constructing a new navy prior to 1898, and for all civil expenditures that the government has undertaken. The table follows:

Expenditures.	1886.	1897.	1902.
Civil	$84,354,000	$117,099,000	$138,465,000
Interest	50,580,000	37,791,000	29,108,000
Pensions	63,404,000	63,404,000	63,404,000
Army and Navy	44,142,000	69,829,000	69,829,000
Total	$242,480,000	$288,123,000	$300,806,000
Per Capita . .	$4.22	$4.02	$3.81

Instead of the results here exhibited for 1897 and 1902, the actual expenditures were, respectively, $365,774,000 and $471,190,000; and the per capita outlay, $5.11 and $5.96. Further comment is needless.

This paper has dealt with the history of federal expenditures, and cannot undertake the more difficult task of divining what results the future will show. It may be too early for us to form an adequate idea of the permanent demands of what seems to be a new national policy. For 1903 the Secretary of the Treasury estimates that the outlay upon the army and navy will exceed by some thirty million dollars the figures for 1902, so that we have not reached the end of the increase of military expenditures. In the light of experience it seems very improbable that the per capita cost of the national government will fall again to the level reached in 1897, and still less to the modest figures for the year 1886.

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STATE ARBITRATION AND THE MINIMUM WAGE IN AUSTRALASIA.[1]

I.

IN the POLITICAL SCIENCE QUARTERLY for September, 1898, the present writer gave a brief account of "The Recent History of the Living Wage Movement" from the great London dock strike of 1889 to 1897. At the time of writing it looked as if the public had assented to the claim of the working classes that they were entitled to a wage which insured them the normal standard of comfort of their trade and afforded the prospect of rising to a higher grade. It also seemed agreed that such a wage should be a first charge on industry and should be determined by committees composed equally of employers and employees. To-day, although the workers have bated not a jot of their claim, and although the conciliation boards in the coal, boot, and iron industries have proved the possibility of maintaining industrial peace, the ideal is still far from realization. It is true that out of 932,126 workpeople who had their wages altered in 1901 only 2 per cent had recourse to a stoppage of work; but in the same year there were 642 strikes involving 179,546 workpeople and having an aggregate duration of 4,142,287 working days, and of the workpeople directly affected 52.8 per cent were engaged in wage disputes. In the nine years, 1893–1901, there have been on an average 776 strikes a year involving 272,800 workpeople and with an annual aggregate duration of 9,516,600 working days. The revival of trade-unionism which followed the dock strike brought with it a plentiful crop of labor disputes and a corresponding eagerness on the part of the public to devise

[1] I must acknowledge the great assistance I have received from the Hon. W. P. Reeves, who courteously allowed me to peruse the proofs of his book, State Experiments in Australia and New Zealand, recently published by Grant Richards (London).

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some means whereby this great disturbance of industry might be avoided. It was hoped that such a means was found in the permissive Conciliation Act of 1896, whereby the services of the Board of Trade could be obtained if both parties agreed; but though this well-intentioned measure has had a certain small degree of success, the cases settled under it are but a trivial proportion of the total number of disputes. The obstinacy of Lord Penrhyn in his quarrel with his quarrymen and the promptness with which the master engineers showed the official conciliators to the door, have effectually dispelled the belief once held in voluntary conciliation. At the same time the fear of strikes has grown. The engineers' dispute of 1897 delayed the naval program for the year, and the strike in the Welsh coal trade in 1898 caused the postponement of the naval manœuvres — and these two events convinced every thinking person that private war in industry might cause an irremediable injury to the national welfare. So, too, as the stress of international competition has been more keenly felt, impatience with stoppage of industry has grown. More lately the legal curtailment of the privileges formerly enjoyed by trade unions has destroyed some of the confidence which the workers once had in strikes as an effective weapon of reform. The defeat of one of the richest unions in England in the engineering dispute of 1897 taught the lesson that banded capital was immensely stronger than banded labor, and the lesson was effectively repeated in 1901 in America with the defeat of the steel workers by the United States Steel Corporation.

On all sides there is a desire to discover a method whereby peace may be secured without injury to the just claims and expectations of the workers. The same feeling prevailed in the Australasian colonies when industry had been laid waste by the maritime strike of 1890, the shearers' strikes of 1891 and 1893 and the miners' strike of 1892. Trade-unionism had collapsed, but after the victory of the conservative forces came a revival of progressivism, and with it an eager searching after some sane means for dealing with the claims of labor.

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The result has been a body of legislation which by its results challenges the respect if not the assent of all engaged in industry. New Zealand led the way under the guidance of the Hon. W. Pember Reeves, then Minister for Labor, now Agent General in London for the colony, who introduced his first Industrial Arbitration and Conciliation Bill in 1891. Not till 1894, however, did he succeed in carrying his measure for the compulsory reference of trade disputes to state boards of conciliation and for the establishment of a state court of arbitration whose decisions were backed by the whole force of the law. Victoria, in 1896, after a fierce agitation against sweating, passed a Factory and Workshops Act, setting up wage boards for the determination of wages in the sweated trades. These two measures have been the models for subsequent legislation in other colonies, and a description of their details and their working will occupy the bulk of this paper. South Australia, after an abortive and badly drawn Arbitration Act in 1894, adopted the Victorian plan in 1900. In the same year West Australia copied the New Zealand Act, and late in 1901 the New South Wales legislature passed an act based, but with important modifications, on Mr. Pember Reeves's model.

II.

The New Zealand Act of 1894 was amended in 1895, 1896 and 1898, and was replaced in 1900 by a consolidating and amending act which was itself amended in the following year. Although the recent amendments are important, yet the working of the system will be best understood if the original act is first summarized, and then the amendments described which were passed to give effect to the teachings of experience.

The "industrial matters" which were brought within the scope of the law were defined to be "all matters or things affecting or relating to work done or to be done, or the privileges, rights, or duties of employers or workmen in any industry, and not involving questions which are or may be the subject of proceedings for an indictable offense." The basis of the act

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was that it took no notice of irresponsible persons. An individual employer was a person with property which could be attached by law, but the individual worker was not in such a position. The act therefore dealt only with organized bodies of work people, and since the trade unions were chary of risking their privileges by coming to close quarters with the law, it provided for the establishment of "industrial unions" for the purposes of the act of not less than seven workers or seven employers. These unions had to be genuine organizations, with rules, committees of management and funds, and when registered they became corporate bodies with powers to sue and be sued, but only for the purposes of the act. No member could retire without giving three months' written notice, and all members by registration of the union became subject to the act. Trade unions could register as industrial unions, each branch being considered for this purpose a separate union, and several industrial unions could unite to form an "industrial association."

The object of the author of the act being to foster mutual settlements of disputes, the measure proceeded next to provide that industrial unions or associations of workers might enter into "industrial agreements" with any employer or employers or union or association of employers in relation to any industrial matter. Such agreements were to be filed in the Supreme Court and enforced in the same manner as awards under the act. In default of such agreements any party to a dispute being an industrial union or association of workers or employers or any employer could refer the matter at issue to a board of conciliation, and after such reference no strike or lockout was permitted. The physical conformation of New Zealand leads to the splitting up of trades into local sections and to the accentuation of local feeling. The act consequently provided that the governor might divide the colony into districts, in each of which there should be a board of conciliation and a clerk of awards. Each board was to consist of four or six persons elected in equal proportions by the industrial unions of workers and employers in the district, respectively, and of a chairman

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elected from outside at the first meeting of the board or, in default thereof, appointed by the governor, who could also nominate members in case any section declined or neglected to elect its representatives. The voting unit was an industrial union, each union having as many votes as there were members to be elected by its section. The term of office was three years, and one-half of the members plus the chairman formed a quorum, the chairman having a casting vote only. When a dispute was referred to it the board had full powers to call for evidence, including books and documents, and to inspect factories, and, notwithstanding the way in which the dispute was referred to it, it could make any arrangement that was necessary to ensure the dispute being brought before it in a complete shape. Special boards could be appointed "to meet any case of emergency or any special case of industrial dispute." Parties could appear before the board either personally or by their agents, or, if all parties agreed, by counsel or solicitor; but such consent has very rarely been given. The duty of the board was first of all to strive to induce the parties to come to a "fair and amicable settlement" of the dispute, and if they failed they were to "decide the question according to the merits and substantial justice of the case." But their decision only became operative if all parties agreed, for any party could require the clerk of awards to refer the dispute to the court of arbitration.

The court of arbitration consisted of three persons appointed by the governor: the president, who must be a judge of the supreme court, and two persons recommended by the industrial associations or unions of employers and workers respectively. The term of office was three years, and one member and the president formed a quorum. The court had jurisdiction whenever a matter was referred to it by a board, or by a party dissenting from a board's recommendation, or by any party in a district where no board had been constituted. The proceedings before the court were similar to those conducted before a board; frivolous cases could be dismissed and costs awarded. The court was to decide cases by a majority of its

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members present "in such manner as they find to stand with equity and good conscience." It could admit evidence which was not strictly legal, and its proceedings could neither be impeached for want of form nor removed to any other court or reviewed "on any account whatsoever." Its award had to be made within one month after the beginning of the case, and was to specify "each industrial union, trade union, association, person, or persons" bound by it and the period not exceeding two years during which it was to be in force. From this enumeration it will be seen that though unorganized workmen could not appeal to the act they could nevertheless be bound by decisions under it. On the application of any party the award was to be filed in the office of the supreme court and became then enforceable like any other judgment or order up to the sum of £500 against any "industrial union, trade union, association or person," and to £10 against any person in virtue of his membership in a union or association. The maximum penalty for each breach of an industrial agreement was fixed at £500.

The act came into force on the 1st of January, 1895, but most of that year was occupied with making the necessary arrangements, and the first case was dealt with early in 1896. Seven districts were constituted each with a board, and a return to the legislative council of the colony shows that during the four years, April, 1896, to March, 1900, twenty-nine cases were settled by the boards, fifty-seven by the court, and one was settled by the parties. The cost of administration was £5404. Under the Act of 1900 the applications to the boards have greatly increased. There have been only seven strikes, and all of these occurred among unorganized workmen or government employees who did not come under the act. In two cases the men afterwards organized and took advantage of the law; in all cases the disputes were trivial and involved only a few men and a short stoppage of work,—at the outside three hundred altogether were concerned. Although the description of New Zealand as a "land without strikes" is not strictly accurate, the few cases of cessation of work among unorganized workpeople only bring out in bolder relief the general success of compulsory

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arbitration. The most remarkable feature about the results is the small number of cases settled by the boards, contrary to Mr. Reeves's expectations. This is largely due to the ill-will with which employers at the beginning regarded the act. While the workers were confident enough to register their trade unions as industrial unions instead of forming separate organizations, the employers held aloof and would not elect representatives to the boards. In such cases Mr. Reeves contemplated that the disputes would be taken straight to the court, and that the boards would operate only where both sides by taking part in their formation were disposed towards conciliation. The government, however, completed the boards by appointing representatives of the employers, and although no whisper has been raised against the integrity of these gentlemen they naturally did not command the full confidence of their class. Besides, we must reckon with the fighting instinct which leads the Anglo-Saxon not to surrender a "right" until the last court has decided against him.

The rush of applicants and the frequency of appeals naturally led to much delay in the settlement of cases, and the chief amendments in the Act of 1900 were directed towards the strengthening of the boards. Unless any party dissatisfied with the decision of a board appeals to the court within a month the decision becomes an industrial agreement. The Act of 1901 goes farther and permits any party to a dispute to take the case straight to the court without passing through a board. The Act of 1900 made some other interesting amendments. Two employers can now form an industrial union; the court may decline to register an industrial union if there is one in the same locality which the applicants might conveniently join; and the boards are reduced to three or five members. The court of arbitration restricted the application of the act to persons engaged in work "of an industrial character"; but the term "worker" is now defined (by the Act of 1901) to include any person "employed to do any skilled or unskilled manual or clerical work for hire or reward." The term of agreements and awards is extended (by the Act of 1900) to

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three years, and notwithstanding their expiry they are to continue in force until superseded by fresh agreements or new awards. The boards can no longer demand the production of employers' books, that power being confined to the court. A board or the court may require at any time the appointment of two experts, one nominated by each side, to assist as assessors but not to act as judges. When industries are related either by being "branches of the same trade" or by being "so connected that industrial matters affecting the one may affect the other," then a board or the court may consider and deal with such related industries in making its recommendation or award. An industrial union of workers may refer a dispute to a board even although no one of its members is directly concerned. An award applies to non-unionist workmen and to new employers coming into the locality within which the award is in force during the currency of the award. Finally, the court may now make an award covering the whole area of the colony "where the award relates to a trade or manufacture the products of which enter into competition in any market with those manufactured in another industrial district." The Act of 1901 placed trade unions in the same position as industrial unions for the purposes of the Industrial Conciliation and Arbitration Acts.

In March, 1900, there were 26,067 members of industrial unions out of 48,938 industrial workers. The passing of the Act of 1901 gave a great impetus to organization; 85 unions were registered in eight months, and in December, 1901, there were 241 industrial unions of workers and 12 industrial associations. At the same date there were 71 industrial unions of employers and one industrial association, but there are still a very large number of employers unorganized.

The briefest summary of the work of the boards of conciliation and the court of arbitration is to say that in the course of the last six years they have had to deal with every kind of industrial question, — time-wages, piecework, overtime, hours of labor, travelling allowances, position of union officials, trade-unionism, introduction of machinery, control of the factory, —

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in fact, every thorny problem which has disturbed industry in other lands. The awards are prepared with the most painstaking care. For example, the wages schedule in the case of the Auckland compositors decided in 1900 covers nine pages of the *Journal of the Department of Labor*, and in the Auckland Boot Trade Award of 1899 there are 796 rates of pay specified. In all cases a minimum wage is fixed, and then usually follows this remarkable provision which removes a fertile source of dispute:

> Any workman who considers himself not capable of earning the minimum wage may be paid such less wage as may from time to time be agreed upon in writing between any employer and the secretary or president of the union; and in default of such agreement within twenty-four hours after such journeyman shall have applied in writing to the secretary of the union, stating his desire that such wage shall be agreed upon, as shall be fixed in writing by the chairman of the conciliation board for the industrial district upon the application of such journeyman after twenty-four hours' notice in writing to the secretary of the union, who shall, if desired by him, be heard by such chairman on such application. Any journeyman whose wage shall have been so fixed may work and be employed for such less wage for the period of six calendar months thereafter, and, after the expiration of the said period of six calendar months, until fourteen days' notice in writing shall have been given to him by the secretary of the union requiring his wage to be again fixed in manner prescribed by this clause.[1]

An example of the famous clause relating to preference to union men must also be given in full:

> So long as the rules of the union permit any person of good character and sober habits, and a competent tradesman, to become a member on payment of an entrance-fee not exceeding 5 *s.*, upon his written application, without ballot or other election, and so to continue upon contributing subscriptions not exceeding 6 *d.* per week, the employers shall employ members of the union in preference to non-members, provided that there are members of the union equally qualified with non-members to perform the particular work; but this shall not compel an employer to refuse employment to any person now employed by him. When union and non-union men are employed together

[1] Canterbury Lithographers award, August 19, 1901.

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they shall work in harmony, and shall receive equal pay. The union shall keep in some convenient place within one mile from the chief post office in the City of Dunedin, and also at some convenient place at Invercargill and at Alexandra, a book to be called "the employment-book," wherein shall be entered the names and exact addresses of all the members of the union for the time being out of employment, with a description of the branch of the trade in which each such journeyman claims to be proficient, and the names, addresses, and occupations of every employer by whom each such journeyman shall have been employed during the preceding two years. Immediately upon any such journeyman obtaining employment a note thereof shall be entered in such book. The executive of the union shall use their best endeavors to verify all the entries in such book, and the union shall be answerable as for a breach of this award in case any entry therein shall in any particular be wilfully false to the knowledge of the executive of the union, or in case the executive of the union shall not have used reasonable endeavors to verify the same. Such book shall be open to every employer without fee or charge at all hours between 8 A.M. and 5 P.M. on every working-day except Saturday, and on that day between the hours of 8 A.M. and noon. If the union fails to keep the employment-book in manner provided by this clause, then and in such case, and so long as such failure shall continue, any employer may, if he so thinks fit, employ any person or persons, whether a member of the union or not, to perform the work required to be performed, notwithstanding the foregoing provisions.[1]

It will be noted that by these provisions the odious non-union quarrel is avoided, open unions are provided and encouraged, the right of the employer to select his workpeople is preserved, unionists are guarded against victimization and the union is utilized as a highly skilled labor bureau.

Some other interesting decisions may be quoted. On the introduction of machinery we have the following:

In the working of all machinery used in conjunction with the curriers' trade, preference shall be given to curriers, provided that such curriers shall have had a previous experience with such machines, and are equally competent with the other workmen who are not curriers. Apprentices to the curriers' trade shall be taught to use the machines.[2]

[1] Otago Boilermakers and Iron-ship Builders award, August 26, 1901.

[2] Canterbury Curriers award, August 15, 1901.

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It is the manufacturer's right to introduce whatever machinery his business may require, and to divide or subdivide labor in any way he may deem necessary, subject to the payment of wages as set forth in the rules hereinafter set forth.[1]

In the event of linotype or typesetting machines being introduced into any office, the members already employed in such office shall have the first opportunity of being employed as probationers, and finally as regular operators, after having attained the required standard of efficiency, in preference to imported operators.[2]

On the vital question as to the control of factories a decision was given in these words:

The employers shall have the fullest right of control (subject to the special provisions of this award) of the factories, and may make such rules for the necessary and proper management thereof as they may deem expedient.[3]

A colonial award was given under the Act of 1900 which deserves some attention. The parties were the New Zealand Federated Boot Trade Industrial Association of Workmen, the New Zealand Boot-Manufacturers' Industrial Union of Employers and ten non-associated employers in Christchurch. Employers were to give preference of employment to unionists, who in their turn were to give preference of service to the associated employers; at any time within twelve weeks the union was to have the right to supply capable men to take the places of non-unionist workmen then employed who declined to join the union; a working week of forty-eight hours and a minimum weekly wage of £2 2 *s.* were fixed; incompetent workmen and apprentices were also regulated; the award was to continue for two years and extend over the districts of Christchurch, Auckland, Dunedin and Wellington; any union in the federation could take proceedings for the enforcement of the award within its own district; no industrial agreement was to be entered into between the manufacturers' association and non-unionists or

[1] Christchurch Bootmakers award, May 4, 1901.
[2] Auckland Compositors award, June 6, 1900.
[3] Canterbury Slaughtermen award, August 14, 1901.

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between the union and non-associated masters without notice to the present parties.[1]

The ordinary objection that compulsory arbitration is useless since awards could not be enforced is refuted by the simple fact that no breach of an award has been committed in New Zealand by any body of workmen, though in some cases the decisions have been displeasing to them. Nor has there been any concerted attempt by employers to frustrate the working of the Act, such breaches as have been proved being few and quickly punished by fines, in one case amounting to £25. The great care taken by the court to meet cases of special difficulty has helped the ready acceptance of its decisions. Current contracts are very often exempted, and in the Consolidated Gold Company's case, 1896, the court decided that the men should submit to a reduction for a limited period on account of the company's heavy expenditure in development work.

As to the effects of the act on capital and industry we fortunately have the independent evidence[2] of Judge Backhouse, who was commissioned in 1901 by the government of New South Wales to inquire into the working of compulsory conciliation and arbitration laws in New Zealand, Victoria and other colonies. After exhaustive local inquiries he reported on this head:

> Generally, I should say that my investigations showed that, with possibly one exception, industries have not been hampered by the provisions of the Act. To attempt to decide whether capital under other conditions would have been invested in particular industries is to undertake a task which has merely to be mentioned to show its impossibility. No doubt general statements were made that this abstention had been practiced, but I found it more than difficult to get specific instances. Any cases which were mentioned, on investigation hardly bore out the view put forward. [Page 15.]

The one exception referred to is the boot trade, but that industry was in a depressed state in 1893 and has continued in

[1] Christchurch Bootmakers award, May 4, 1901.

[2] Report of Royal Commission of Inquiry into the Working of Compulsory Conciliation and Arbitration Laws (New South Wales, 95 A, 1901).

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the same condition, as it also has in other Australasian colonies. The real cause of the depression is American competition, as is shown by the rise in the import of boots from £115,205 in 1895 to £186,088 in 1900. Since the passing of the act New Zealand has grown steadily more prosperous. In 1894 its export and import trade was £16,000,000, in 1901 £23,000,000; in 1895 29,879 hands were engaged in factories and workshops, in 1901, 53,460. As the fiction that the New Zealand labor laws have injured the prosperity of the colony is constantly being repeated, it may be as well to quote an Australian correspondent of the *Times* (April 4, 1902), a hostile but plainly a well-informed witness:

> New Zealand, having recklessly borrowed English capital and alienated its best land, was in a very bad state till the Ballance government came into power. That government, and the Seddon government which followed it, proceeded, by heavy taxation and by compulsory resumption, to force the good land back into the market. They passed factory acts and compulsory arbitration acts, and compelled government contractors to pay high wages to their employees; they are opening a state coal mine, and have in force a system of state life insurance. And yet, in spite of all this — or because of all this — New Zealand is at present one of the most prosperous places on earth.

While this prosperity has made the working of the act smoother in some respects, it has led to increased demands on the part of labor, which fortunately have taken the form of increased recourse to the courts instead of to strikes. It has also inevitably brought about a rise in prices which Judge Backhouse mistakenly attributes to the working of the act.

The rush of applicants caused some temporary impatience with the workmen and no doubt contributed to increase the appeals from the boards to the court. The apparent inefficacy of the boards has led to suggestions for their reform or abolition. It is somewhat doubtful whether the payment of members has worked well, and though the great majority of the members are highly respected, yet in Judge Backhouse's opinion some, by "taking an active part outside in the furtherance

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of the claims of one of the parties," render their boards "boards of irritation rather than conciliation." Yet both Mr. Reeves and Mr. Justice Cooper, the president of the court of arbitration, believe, and rightly, that the boards are necessary. The double threshing out of a case leads to the more careful avoidance of injustice or of injury to trade. Such delay as there is is well paid for by this great gain.

A final quotation from Judge Backhouse will fitly close this part of our investigation:

> The Act has prevented strikes of any magnitude, and has, on the whole, brought about a better relation between employers and employees than would exist if there were no Act. It has enabled the increase of wages and the other conditions favorable to the workmen which, under the circumstances of the colony, they are entitled to, to be settled without that friction and bitterness of feeling which otherwise might have existed; it has enabled employers, for a time at least, to know with certainty the conditions of production, and therefore to make contracts with the knowledge that they would be able to fulfil them; and indirectly it has tended to a more harmonious feeling among the people generally which must have worked for the weal of the colony. A very large majority of the employers of labor whom I interviewed are in favor of the principle of the Act. . . . The awards generally have been in favor of the workers, and it is therefore easy to understand that the unionists to a man believe in the Act, and, as I have already mentioned, the non-unionists, as far as my observation goes, find no fault with it. . . . But while the effects of the Act so far are good, the time has not yet come when it can be said with any certainty that it is a measure which will provide for the solution of all labor troubles. Since it came into operation in New Zealand, everything has been in favor of an increase in the emoluments, and of an amelioration of the conditions of labor, and there cannot be the slightest doubt that wages would have risen if there had been no Act. . . . When lean years come, as come they must, . . . when wages will be cut down, instead of being raised by the awards — then, and not till then, can any one speak with authority as to whether the principle involved is workable or not. [Pages 25–26.]

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III.

The legislation of Victoria in regard to Minimum Wage Boards is contained in The Factories and Shops Act, 1896, No. 1445, amending Acts of 1896, 1897 and 1898, and in the consolidating and extending Factories and Shops Act, 1900, No. 1654. The original act dealt only with the sweated trades, —clothing, furniture and bread making,—and was to remain in force for five years; the amending acts remedied various defects which came to light; and the Act of 1900 extended the legal regulation of wages to all trades and was to be operative until the session of Parliament next following May 1, 1902. A commission was appointed under the last-named act to inquire into the working of the acts and their effect on trade, manufacture, labor and commerce; but up to the summer of 1901 it had taken evidence principally as to early closing.

In summarizing the law it will be most convenient to take the Act of 1900. Section 15 (1) runs:

> In order to determine the lowest prices or rates which may be paid to any person or persons or classes of persons for wholly or partly preparing or manufacturing either inside or outside a factory or workroom any particular articles of clothing or wearing apparel or furniture or for bread making or baking or to any person or persons or classes of persons employed in any process, trade or business usually or frequently carried on in a factory or workroom or employed in the process, trade or business of a butcher or seller of meat or maker or seller of small goods, the Governor in Council may if he think fit from time to time appoint a Special Board consisting of not less than four or more than ten members elected as may be prescribed and a chairman, and may at any time remove any member of the Special Board. In fixing such lowest prices or rates the Special Board shall take into consideration the nature, kind and class of the work and the mode and manner in which the work is to be done and the age and the sex of the workers and any matter which may from time to time be prescribed. Provided that no such Special Board shall be so appointed except for the process, trade or business of a butcher or seller of meat or maker or seller of small goods, and except in the case of any trade or business which at the commencement of

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this Act is included under the provisions of the Factories and Shops Acts as regards Special Boards unless a resolution has been passed by either House of Parliament declaring that it is expedient to appoint such Special Board.

The board may fix either a time rate or a piecework rate (based on the time rate) of wages or both, except that "for wholly or partly preparing or manufacturing outside a factory or workroom articles of clothing or wearing apparel a piecework price or rate only shall be fixed." The occupier of a factory or workroom may require the board to fix a piecework rate for persons operating machines. Instead of specifying piecework rates the board may determine that such rates based on the time rates fixed by the board may be paid, and any employer who pays piecework rates under this provision must base them "on the earnings of an average worker working under like conditions to those for which the piecework prices or rates are fixed and who is paid by time at the wages rates fixed by such Special Board"; the Inspector of Factories may require a list of such piecework rates to be sent to him, and if he is dissatisfied with them he may get the proper board to fix a suitable rate, the employer being bound to pay to his employees twice the amount by which his wages are deficient for the period elapsing after the inspector has given him notice of his dissatisfaction. When a time rate only has been fixed by a board it is illegal to pay piecework rates. The board shall also fix the number and determine the wages of apprentices or improvers or both; determine the maximum number of hours to be worked per week at the minimum wage; and fix rates of overtime. A minimum wage of half a crown a week must be paid to any person employed in a factory or workroom except "any member of the employer's family related in the first or second degree by blood or marriage to the employer." "If it is proved to the satisfaction of the Chief Inspector that any person by reason of age or infirmity is unable to obtain employment at the minimum wage fixed by any Special Board," a renewable license to work at a specified less wage for twelve months may be issued.

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A first breach of the act is punishable by fine up to £10; a second by fine from £5 to £25; and a third by fine from £50 to £100 and cancellation of the registration of the factory or workroom. A determination of a special board can be challenged for illegality before the supreme court only, and the governor may suspend a determination for six months to give the board an opportunity of reinvestigating the case and deciding whether to alter or adhere to its decision. A determination once fixed continues in force until altered. The members of the boards are elected one-half by the employers, one-half by the workmen, lists of those qualified to vote being prepared from information supplied by the employers. In the case of the special board for men's and boys' clothing, the representatives of the employers must consist of three representatives of makers of ready-made clothing and two of makers of order clothing, elected by separate rolls of voters. Owing to difficulties arising from the number of Chinese engaged in the furniture trade the special board in that industry is appointed by the governor in council. The chairman of a board is appointed by the governor on the nomination of the other members. The term of office of a board is two years, and the chairman is paid £1 and the members 10*s.* for a whole-day sitting, and half those fees for a half-day sitting.

Under the Act of 1896, six special boards were appointed: Bakers', Boot Makers', Clothing Manufacturers', Furniture Manufacturers', Shirt Manufacturers' and Underclothing Manufacturers'. Under the Act of 1900 twenty-one more boards were appointed up to the end of 1900: Butchers', Brick Makers', Carriage Makers', Cigar Makers', Confectioners', Coopers', Engravers', Fellmongers', Jam Manufacturers', Jewellers', Millet-Broom Makers', Pastry Cooks', Plate-Glass Workers', Printers', Pottery Makers', Saddlers', Stonecutters', Tanners', Tinsmiths', Wood Workers' and Woolen Workers'. In 1901 and 1902 eleven additional boards have been appointed, making a total of thirty-eight boards settling the conditions of labor in trades employing 35,000 men out of a total of 57,000 engaged in factories and workshops. The Act of 1900 came to an end in the summer

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of 1902, when an unexpected general election prevented its renewal; but both sides pledged themselves to re-enact it as soon as the new Parliament met. During the brief period of its abeyance there was an ugly relapse of some of the employers into the old sweating practices, which taught both public and politicians the sharp and needed lesson that the baser sort of master is not easily reformed. As soon as the new session opened the act was renewed for a further period.

The most significant fact about the later boards is that many of them were asked for by many of the employers in the trades concerned. This eloquent testimony to the utility of the boards of 1896 will lead us to look with leniency on the defects which were discovered in their working. The general results as to wages will be seen from the following table:

	Average Weekly Wage.		Minimum Wage.
	1896.	1901.	
Baking, Males	£1 12 *s.* 5 *d.*	£2 2 *s.* 6 *d.*	1 *s.* ½ *d.* per hour
Clothing, Males	1 15 3	2 0 5	7 *s.* 6 *d.* per 8-hr. day
Clothing, Females	15 5	18 3	3 *s.*-4 *d.* per 8-hr. day
Boots, Males	1 6 10	1 14 5	7 *s.* per 8-hr. day
Boots, Females	13 4	15 3	3 *s.* 4 *d.* per 8-hr. day
Shirts, Females	14 5	14 8	4 *d.* per hour
Underclothing, Females	11 3 (1898)	12 7	4 *d.* per hour
Furniture, Males	1 9 7	2 0 7	1 *s.* per hour
Furniture, Females	14 1	1 0 4	3 *s.* 4 *d.* per 8-hr. day

The average wages of men and women are of course much higher when allowance is made for the children and young persons employed, and in the case of time workers they are always well above the legal minimum. The number of apprentices fixed in different cases is as below:

Clothing, one male apprentice or improver to every three male adults; one female apprentice or improver to every two female adults.

Boots, three female apprentices or improvers to every two female adults.

Shirts, one female apprentice or improver to every three female adults.

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Underclothing, two female apprentices or improvers to every female adult.

Furniture, one male apprentice or improver to every four male adults.

Butchers, one male apprentice or improver to every three male adults.

In the shirt trade employers are allowed to fix piecework rates inside factories provided that they enable an average worker to earn not less than 4 *d.*, 4½ *d.* and 5 *d.* per hour according to the class of work done. In the underclothing trade, owing to the hundreds of lines manufactured, the employers are also allowed to fix their own piecework rates based on the time wage minimum of 4 *d.* per hour. "The utmost that can be said in favor of this system of fixing piecework rates," according to the Chief Inspector in his report for 1899, "is that it is better than nothing, and enables the Department to interfere when competition cuts the prices so low that even a skilled worker cannot earn the 4 *d.* per hour fixed by the Determination."

The object of the act was to prevent sweating, and on this point Judge Backhouse says: "That the Act has to a large extent put a stop to 'sweating' there can be little doubt, but it is very questionable whether, as far at least as some of the workers are concerned, a state of things has not been brought about which is quite as unsatisfactory" (p. 29). Before the Commission on Unemployment in 1899 it was maintained by the employers that it was more profitable to employ young and quick men at the minimum wage, and therefore the old and slow workers were displaced in greater numbers; that girls were dismissed as soon as they had finished their apprenticeship; that workers had to work harder and more consistently; and that for all these reasons the Factory Acts tended to create unemployment. Particular complaint was made about the boot trade, where the determination of the board came into force on December 29, 1897, and it was shown that the number of persons employed fell from 4590 in 1897 (after having risen steadily from 3795 in 1894) to 4235 in 1898. Mr. Harkness, one of the chief manufacturers, declared:

I freely admit that the average earnings of the operatives actually in work have been substantially increased by the minimum weekly wage,

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the established piecework rates, and by the restriction of boy labor. Those in employment, of course, form the large majority of the workers, but it is no consolation to operatives debarred from working by the conditions now prevailing to know that those conditions have operated to the advantage of those more favorably circumstanced than themselves.

Mr. Peacock, the Chief Secretary, suggested that the decrease fell on apprentices and improvers. He said:

> In one factory there were formerly 15 males, 20 apprentices and 3 improvers, now there are 24 males, 6 apprentices and 7 improvers; in another there had been 10 males, 7 apprentices and 1 improver, now there are 12 males, 3 apprentices and 3 improvers; in another there had been 15 males and 17 apprentices and improvers, now there are 56 males, 13 apprentices and 8 improvers. It had been predicted that the minimum would become the maximum, but this was not so. There were 1749 males last week in 111 factories. Of these, 439 or 25 per cent were paid 45 *s.* or more, 115 40 *s.* to 45 *s.*, and 221 were on piecework, leaving 974 who were getting from 36 *s.* to 40 *s.*, and a good many of these were getting less than 36 *s.* before the determination. In these 111 factories there were only 4 where the wages had been reduced to 36 *s.* These figures were obtained by special inquiry.[1]

At that time 36 *s.* was the minimum wage. The workmen also pointed out that the employers had worked their factories day and night to accumulate stock in anticipation of the act, and that stagnation had naturally followed. By 1900 the trade had to a great extent recovered, the persons employed in that year being 4,304, and exports having risen to £61,463 compared with £48,213 in 1897. It must also be borne in mind that trade during the last few years has suffered from American competition and from a forty-five per cent rise in the price of raw materials.

The incapacity of the old and slow to earn the minimum wage had not been foreseen by the framers of the Act of 1896, and the Factory Department had to prevent injustice by issuing permits to such persons to work at reduced rates, fifty-eight being granted in 1899. This plan was legalized in 1900, but it is clumsy compared with the New Zealand method of meeting the same difficulty. Judge Backhouse estimates that

[1] *Melbourne Age*, February 24, 1898.

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"at least 250 hands" are employed below the minimum wage, the factory inspectors being deceived by false entries in the books. The same charge of evasion is made with regard to the other trades, but what the chief factory inspector said in his report for 1899 about the baking trade applies generally: "I have never been able to get evidence which would justify such a charge . . . if the men have not the courage to see that they get their legal rights, I do not see what further can be done." In the baking trade evasion was practiced by working men part of their time as pastry cooks, but that section of the trade has now a special board.

One notable result has been the reduction of out-work in the clothing trade, where the piecework rates were fixed a little higher than the time rates to compensate the workers for rent and loss of time in conveying goods. The employers have replied by introducing machinery and getting the work done in their factories, exactly the result which all students of the "sweating" problem wish to see achieved.

The improved organization of labor which always follows the enactment of factory acts is again exemplified in the baking industry, where the men are paid as much now for forty-eight hours' work as they were formerly for sixty, but do as much in the shorter time as they did in the longer. The protection which the acts have been to the workers is seen in the case of dungaree trousers, where the price paid by the wholesale houses to the manufacturer fell from 13 *s.* per dozen before 1897 to 7 *s.* 6 *d.* in 1899. Under free competition this loss would have fallen entirely on the workers; under the acts the manufacturers recoup themselves by better organization and improved methods, and where they raise the price to the warehouses the latter still retain an ample margin of profit without raising prices to the consumer. In the underclothing trade, that special home of sweating, it is worth noting that the lady factory inspector reports that the home workers as well as the factory workers have "greatly benefited" by the act. The results in the furniture trade are the least satisfactory of all, owing to the impossibility of overcoming deception by

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the numerous Chinese in the industry. Here, too, the "old and slow" workmen are a source of trouble, since they set up for themselves in unlicensed home workshops.

Up to 1895 trade had been depressed; since that time it has gradually recovered. To that extent the rise in wages may be attributed to general trade conditions, but no other trades show such remarkable increases as those granted by the special boards. The average wage in the printing trade, an industry which is a barometer of prosperity, was in 1897 27 *s.* 3 *d.*, and in 1899 27 *s.* 4 *d.* The average wage in the dressmaking trade was 11 *s.* 1 *d.* in 1897 and 10 *s.* 11 *d.* in 1899; in biscuit making 18 *s.* 3 *d.* in 1897 and 16 *s.* 3 *d.* in 1899 — results which may with advantage be compared with the wages in cognate trades under special boards. Although the employment figures of the regulated trades show a steady rise, industry has not been in the flourishing condition which has prevailed in New Zealand, but, while improving, has been on the whole dull. We are, therefore, by the experience gained in Victoria, able to discount the criticism leveled at the New Zealand success that it is due entirely to the prosperity of the colony. In good times and dull times we learn that regulation of wages is possible.

As much complaint has been made about the regulation of the number of apprentices as about the determination of wages, if not more, the employers contending, as they also contended in New Zealand, "that in time to come there will not be a sufficient number of skilled hands to meet the requirements of some of the industries." Complaints were particularly abundant in the clothing trade, where the scarcity of competent female labor caused employers to assert that the proportion of female apprentices permitted, one to three adults, was too small. The fault, however, lay largely with employers, especially in the order trade; for while in the ready-made the full legal numbers were always employed, one of the lady inspectors reported in 1899 about the order trade:

> There are a very considerable number of employers in this branch of the trade who do not take apprentices at all, and who will not take them, preferring that other people should have the bother of teaching

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them, and then expressing astonishment at the fact that so few skilled hands are obtainable. . . . The pieceworkers, who are supposed to gain by having an apprentice, do not care to take them, as they say they lose more in teaching the girl than they gain by her extra work. The employees on weekly wages could not possibly have any objection to taking apprentices, but the employer is often averse to it, as he considers that too much of the time of the employee is wasted in teaching girls who may leave at any moment.

The difficulty is but one particular instance of the universal breakdown of apprenticeship which we find in all industrial countries, and it will be interesting to observe whether the legislatures of Victoria and New Zealand will be successful in retaining a system, for which, despite its faults, we have so far been unable to find a completely satisfactory substitute in any scheme of manual training. Meanwhile the trouble in the Victorian clothing trade has not been appeased by raising the proportion of female apprentices to one to every two adults, and since the employers will not organize the industry the government must, by technical schools or otherwise, see that the trade does not leave the colony.

The clothing trade well exemplifies the difficulty of regulating a thoroughly disorganized trade. While the special board was toiling through nine months in preparing an exhaustive "determination" of thirty-five closely printed foolscap pages the employers were frantically laying up stock, and in the slack time which necessarily followed they took advantage of the necessities of their workpeople to try evasions of the law. When prosecuted for illegally employing an apprentice they succeeded in getting the conviction upset by maintaining, in the absence of indentures, that she was an improver. The minimum wage for apprentices was evaded by requiring back as a premium on Monday morning the half crown which had been paid as wages the previous Saturday, and by other variations of the premium system. By the Act of 1900 all such evasions are prohibited. In the boot trade more apprentices are now at work than were employed in 1896 when there was no limitation, and the factory inspectors answer the cry that

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there is a difficulty in getting skilled tradeswomen by pointing out that the employers do not train their apprentices properly. A dearth of workers is also reported in the underclothing trade, but a factory inspector suggests that "owing to the very low prices paid in the past there has not been sufficient inducement for girls to stay at the trade."

The Butchers' Board introduces us to a special difficulty arising out of the social habits of Australia and probably not existing elsewhere. The average wage fixed since January 1, 1901, is 45 *s.* per week of fifty-two hours. Judge Backhouse says:

> The general complaint of the master butchers is that they have a difficulty in arranging that the men should work the prescribed hours only. The most of the business is done in the early part of the day, and work must commence at the latest at 6 o'clock in the morning to enable breakfast meat to be delivered, while the shop cannot shut before five unless the public is to be inconvenienced. To get over the difficulty some employers give two half-holidays to their men, arranging the times so that they always have some one in the shop; others allow long dinner hours. The price of meat has risen for the best joints 1½ *d.* per pound, most of which I think is due to the higher price of stock, but some undoubtedly to the rate of wages and hours fixed. [Page 34.]

In all the trades under the newer boards the same story is told of increased wages, of the decrease of sweating, of the general prevalence of average wages considerably above the fixed minimum, and of the resultant better organization of industry. The general opinion of employers after experience of the new conditions is that they would not return to the old. Of course there has been some friction. The employers' representatives on the Woolen Trade Board objected to one of the men's representatives since he was not practically acquainted with the trade, but after some months' negotiations the difficulty was settled, and a "determination" embodying fifty rates of wages is now in force. The master fellmongers retired from their board in the spring of 1901, because the majority carried a resolution fixing a 48-hour week. No other representatives of the employers would take their places, so the governor in

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council appointed five persons to fill the vacancies and a determination was framed. The employers then appealed to the supreme court to quash the determination on the ground that the governor's nominees could not be representatives of the employers under the act; but were beaten. Still bent on resistance most of them closed their premises for a time, and the 309 men at work in 1900 were reduced to 127 in 1901. But the workmen stood firm by the board, and in the spring of 1902 only the two largest yards were still closed. Trouble is pending also in the jam and confectionery trades, where wages have been fixed not according to the skill but according to the age of the workers. This naturally works to the detriment of the women over twenty-one years of age and is unequivocally condemned by the factory inspectors.

On the whole, while we must admit that there has been a considerable amount of friction in the working of the Victorian wage boards, there has not been more than might reasonably have been expected. Administrators tackled the hardest part of the industrial problem first and gained their experience by dealing with the chaotic sweated trades instead of with those which had reached a fair stage of organization and where employers and employed were trained to negotiation. Comparing the Victorian with the New Zealand system the former has the advantage that no dispute is necessary to set the law in motion and that the legal determination of wages is posited as part of the established order of things. On the other hand, the New Zealand requirement that the initiative must be taken by an organized body throws a grave responsibility on the plaintiffs, and the careful preparation of their case which is required necessarily exerts a sobering influence. In New Zealand the administration of the law is kept out of reach of the politicians, while in Victoria the consent of Parliament is needed for the formation of new boards, and "determinations" can be suspended on appeal to the governor, provisions which render possible at least the suspicion of political influence. The difference in the powers of the two sets of authorities is obvious, but the institution of trade boards in Victoria will

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commend itself to the workers in older settled lands rather than the local boards of New Zealand. New Zealand has another advantage in the greater elasticity of its law. Other defects of the Victorian law are the cumbrous system of electoral rolls, and the clumsy method of dealing with the old and slow. The term of office of the boards, two years, is also too short. Finally it is a serious omission that nothing is done to foster organization among the workers.

IV.

The legislation of the other colonies can be dismissed more briefly. The South Australian Conciliation Act of 1894, very similar in principle to the New Zealand Act of the same year, was nullified in the first case raised under it, by the employer adopting the simple device of discharging his workmen on hearing that there would be a reference, and maintaining that having no employees he had no dispute. In December, 1900, that measure was supplemented by a Factories Amendment Act providing for the establishment of Minimum Wage Boards on exactly the same plan as in Victoria; the lowest minimum wage for any employee was fixed at 4 *s.* per week, and the boards were enabled to give special rates to the old and infirm. It is, as yet, too soon to ascertain how the act has worked. In West Australia also, in December, 1900, the Industrial Arbitration and Conciliation Act became law. Judge Backhouse, writing some six months later, says: "It is modeled on the New Zealand Acts. Although I understand there have been industrial disputes, neither side has, as far as I could learn, taken advantage of its provisions" (p. 34).

After a failure in the preceding year the Industrial Arbitration Act of New South Wales was assented to on December 10, 1901, a measure presenting many remarkable features. Based, as every section shows, on the New Zealand acts, it differs from them foundationally in omitting the boards of conciliation. The reason for this omission was doubtless partly the greater concentration of industry obliterating local patriotism, partly objection to the delays under the New

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Zealand law; but it is doubtful whether too high a price has not been paid for rapidity of decision. As already indicated there are many merits in the dual authorities established in the southern colony. The industrial unions of workers are defined to be trade unions or branches thereof registered under the act and thereby incorporated solely for the purposes of the act, a bold recognition of the utility of trade unions not possible seven years earlier. Industrial unions of employers are any person or company or association of persons or companies employing at least fifty workpeople. Industrial agreements may be made and enforced at law. The court of arbitration consists of a judge of the supreme court and two members nominated by the governor on the recommendation of the industrial unions of employers and workers respectively, and holds office for three years; salaries £750 per annum each. The fullest freedom is conceded to the court to exercise its functions in the manner which may appear to it most suitable, and its decisions are final. Disputes may be referred to the court by any of the parties thereto if industrial unions, and by the registrar or chief executive officer of the court, when any one of the parties is not an industrial union. This latter provision is intended to make the act operative even in unorganized industries, and contemplates a state of things worse than has been found in New Zealand, where even the sweated trades have organized to take advantage of the law. A strike or lockout before a reasonable time has elapsed for a reference to the court or while proceedings are pending is punishable by fine up to £1000 or imprisonment up to two months. This drastic method of abolishing the right to lock out aggrieved employees is probably the most forcible limitation of the liberty of employers which has yet been legalized in any free country. Whether the punishment be ever inflicted or not, the mere fact that it was instituted by the legislature is eloquent of the state of public feeling in the colony. The act goes on:

> If an employer dismisses from his employment any employee by reason merely of the fact that the employee is a member of an industrial union or is entitled to the benefit of an award, order or

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agreement, such employer shall be liable to a penalty not exceeding £20 for each employee so dismissed. In every case it shall lie on the employer to satisfy the court that such employee was dismissed by reason of some facts other than those above mentioned in this section. Provided that no proceedings shall be begun under this section except by leave of the court.

The most notable clause is the "common rule" clause, for which Mr. Wise, the author of the act, said he was indebted to the study of Mr. and Mrs. Sidney Webb's *Industrial Democracy;* and he maintained that it was "the most logical, complete and effective method of enforcing the awards." It provides that in any proceeding the court may

(1) declare that any practice, regulation, rule, custom, term of agreement, condition of employment, or dealing whatsoever in relation to an industrial matter, shall be a common rule of the industry affected by the proceeding; (2) direct within what limits of area and subject to what conditions and exceptions such common rule shall be binding upon persons engaged in the said industry, whether as employer or as employee, and whether members of an industrial union or not; (3) fix penalties for any breach or non-observance of such common rule as declared as aforesaid.

In New Zealand the same purpose of bringing the rate-cutting employer and his non-unionist accomplice under the same rules as their honorable fellows has been achieved by the slower method of piling award on award until the whole colony has been brought under regulation; but even in New Zealand the need for a swifter jurisdiction to meet the case of competing industrial districts has been acknowledged by the provision for colonial awards under the Act of 1900. The maximum penalties for any breach or non-observance of any award, order or direction are fine not exceeding £500 in the case of an industrial union or any person bound by the award who is not a member of an industrial union, and fine not exceeding £5 in the case of any individual member of an industrial union. The awards are not limited in time. Lastly, it may be noted, that contrary to the excellent New Zealand precedent parties may appear before the court by counsel.

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This summary of Australasian legislation conclusively proves that the legal regulation of the conditions of labor whether by compulsory arbitration or some other form is possible. It would be too much to say that it is possible under all circumstances, but it has been shown that under certain widely varying circumstances it has been successful. It can no longer be disposed of by *a priori* arguments based on book theories of economics or politics, and that alone is a great gain. It is now incumbent on the older countries with more complex industries to take up the experiment and ascertain the value of the principles by applying them to their own problems. For this purpose it will probably be best to follow Victoria and establish trade boards, since artisans, in Great Britain at least, are apt to show great distrust and jealousy of the interference of outsiders with their trade. The new method should first be tried in one or two selected trades and gradually extended to others as experience advised. In Great Britain suitable trades would be the railway workers, who are already in favor of the principle, and the miners, who have had a long experience of the working of conciliation. A court of arbitration, appointed as in New Zealand, should be established for each trade, and boards of conciliation should be set up in the various centres of the industry. Generally speaking the procedure of New Zealand should be followed, care being taken to keep all the provisions of the law as elastic as possible. The courts and boards should create their own methods of working from their own experience and should strive to foster conciliation and the regulation of industry by voluntary agreements. Employers would gain by the stability of industry, workers by their rise in status. A grave problem is before us; it is worth while, it is imperative, to attempt a solution.

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REVIEWS.

The Administration of Dependencies. A Study of the Evolution of the Federal Empire. By ALPHEUS H. SNOW. New York, G. P. Putnam's Sons, 1902. — 619 pp.

The book before us occupies a place in a steadily increasing body of literature, the purpose of which is to give a connected view of British colonization in all its phases, and to show how it stands related to the systems of other nations. Mr. Snow's contribution to the discussion may be briefly described as an attempt to show that the ultimate question at issue in the development of the British colonial system has been this: Were the realm and the dominions one and the same, or were they distinct? The book is not easy reading, for it consists mainly of quotations from charters, commissions, statutes, pamphlets and other more or less authoritative statements of opinion or law on the subject, followed by comment and exposition by the author. It is in the nature of a lawyer's brief. But as the material is suggestively arranged by periods, the effect of the whole is impressive. The unfolding of divergent opinions is clearly brought out. The author is chiefly concerned with theory and legal opinion, and the book is in no sense a history of colonial administration.

By quotations from the early utterances of the colonists, from the writings of Dulany, Hopkins, Dickinson, Wilson, Morris and others in the time of the Revolution, and from the resolutions of the Stamp Act Congress and the Continental Congress, the author shows very clearly that the colonists were unanimous in the opinion that they were not a part of the realm. The agreement of Burke and his associates with the colonial view is of course pointed out. Due reference is also made to the fact that some contemporary writers, like Bernard, deplored the failure of the home government to define existing relations, and urged that the uncertainties be removed by the admission of representatives from the colonies into the House of Commons. On the other hand, Grenville, Mansfield, Knox and the parliamentary majorities which, subsequent to 1764, passed the acts that affected the colonies, spoke, wrote and acted in support of the principle that the colonies were subject in all things to the authority of King and Parliament, and hence were a part of the realm.

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But as Mr. Snow indicates, the policy of the home government prior to 1764 was in harmony with the contention of the colonists. The colonies had really been treated as subordinate jurisdictions, member states, which were distinct from the realm but yet a part of the empire. English law was considered to be in force in them only so far as it was suited to their condition. King and Parliament together acted as a supreme regulative power over them. As Burke declared in the noble passage of his speech on American taxation, Parliament acted in two capacities: one as the local legislature of the British Isles, the other as the supreme regulative power within the British empire. In this her imperial character, "as from the throne of heaven, she superintends all the several inferior legislatures, and guides and controls them all without annihilating any." It is this lofty power of superintendence and disposition upon which the author dwells as the characteristic function of King and Parliament when acting in their imperial capacity. It was not simply legislative, but judicial and administrative as well. It was necessarily, says the author, a power without specific limits imposed upon it from outside, but its exercise was "conditional upon the holder of the power adjudicating the limits of his own powers according to his own opinion of the necessity for his interference in each particular case as it arises." But the authority should be so exercised in all cases that the "whole organism under its superintendence may most perfectly and beneficently perform its functions" (p. 270). This is the conception of the federal empire, toward which, except during the years between 1764 and 1783, British policy tended. Its existence was acknowledged, and powers were expressly distributed among the component parts, when, at the middle of the nineteenth century, self-government was granted to Canada and Australia. Since that time, in the administration of India and of the crown colonies, as well as in the affairs of those to which self-government has been granted, the British government has always sought expert advice — information from agents, commissioners, resident officials — and has sought to adapt its measures to local custom, law and needs. By so doing it has exercised a trusteeship on behalf of the dependencies, and, in the opinion of the author, has exhibited the true nature of the federal empire.

The concluding chapters of the book contain an elaboration of the thought that the federal empire is as much an American as a British creation, the American Union being the imperial state, and the territories the dependencies. The acquirement of trans-oceanic

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dependencies has brought into clear relief the fact that such an empire exists and has also revealed something of its nature. The author contends that the principles of law and policy by which the government of the United States has been guided in the administration of the territories have been essentially the same as those which the British government has followed. He further argues that they should be adhered to and developed in the administration of our trans-oceanic dependencies, a proper division of functions between the President and Congress, similar to that existing between King and Parliament, being maintained.

It is certain that Mr. Snow has rendered a valuable service to early American history. He has done this in part by marshaling the divergent opinions which were held concerning the relations that existed between the colonies and the mother country. But his chief service has been in showing how, in both theory and policy, the men of the seventeenth and eighteenth centuries were half-consciously seeking an arrangement under which the sovereignty of the parent state could be brought into perfect harmony with the rights of self-government which had come to exist in the colonies. A new and vast political system was gradually taking shape, within which all proper claims were finally to be reconciled.

HERBERT L. OSGOOD.

Municipal Administration. By J. A. FAIRLIE. New York, The Macmillan Company, 1901. — xiii, 448 pp.

In this book Dr. Fairlie has endeavored to set forth the results of the recent and specialized studies on the activities of the larger urban communities of the world. Though devoting his attention mainly to Europe and the United States, he often roams far afield in search of illustrative material. From time to time, therefore, we read of the conditions in Japan, India, South America, South Africa and Australasia. In the present chaotic state of our knowledge of the subject of municipal activities, such collections of material, when well classified, are invaluable, especially to one desiring a wide view of the field. The same conditions, however, make broad generalizations or philosophic discussions unsafe, and Dr. Fairlie has wisely refrained from hasty conclusions. The work is, therefore, largely a compilation of a great number of facts, gathered from all kinds of sources, which will serve admirably as a reference book as well as a basis for future studies. The author does not attempt to strike out in any very original lines in his treatment of the subject, accepting for the most part

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the classifications of previous investigators in the field. He undertakes no criticisms of modern conditions and proposes no reforms, but gives a clear and straightforward account of things as they are.

The book is divided into four parts, dealing respectively with municipal history, municipal activities, municipal finance and municipal organization. Of the 431 pages making up the body of the work, 122 pages are devoted to an historical introduction, and the remainder to the consideration of modern problems.

In the first part there is an endeavor to describe in the small space of some fifty-four pages, the activities of the cities of the civilized world from the dawn of history to the beginning of the nineteenth century. This part of the work, though helpful and generally accurate, is nevertheless inadequate; indeed, it would hardly be possible to compress an account of the earlier period of municipal activity into the space mentioned without omitting much that is valuable and essential. For example, justice cannot be done to the activities of the mediæval borough governments of England in one short paragraph (p. 46). A cursory reading of the modern publications of the English borough records would enable one to add much to this sketch. In the same way the brief historical introductions to modern institutions inserted in the remaining parts of the book are open to criticism because of their brevity. It is almost impossible to give the ordinary reader any idea of the development of institutions or of the prevailing complexity of mediæval and modern conditions in the space Dr. Fairlie has devoted to the task. To those who are without a broad knowledge of the field, such brief statements are apt to be misleading. The first part of the work concludes with a discussion, upon the conventional lines, of the growth, during the nineteenth century, of municipalities in England, France, Germany and the United States, special stress being laid upon the legislation of the central governments concerning municipal subjects.

With the second part of his study Dr. Fairlie enters upon more familiar ground, and the remainder of the book is devoted to purely modern municipal conditions. The author has divided this second part, on "Municipal Activities," into two sections. In the first he treats the activities of the municipal authorities in their capacity of agents of the central government; in the second, their activities as distinctly local corporations "serving the special local needs of the community." Under the first rubric he places his treatment of the police, fire and health departments, and of the various charitable,

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providential and educational institutions of the modern city. The second class includes such municipal undertakings as parks, streets, waterworks and markets. As there is an obvious lack of interest in many of the latter forms of activity in the United States, Dr. Fairlie has had to rely mainly upon European material for his illustrations and classifications. Though the array of facts in this part of the book is very impressive, one feels that much of the material is too detailed in a work which is not in intention an encyclopedia.

The third part of the volume is a collection of data concerning municipal finance. Its division into municipal expenditure, municipal debts, municipal revenues and municipal administration clearly indicates the treatment of the subject. There is, however, no effort made to enter into the details of these various matters.

The fourth and last part contains a brief study of modern municipal organization, the mayor, the council and the administrative officials coming in for a share of the discussion. This important topic receives too little attention from Dr. Fairlie. Any just apportionment would surely give more than twenty-three pages to the subject. As a conclusion to this section Dr. Fairlie examines the Municipal Program and some of the other proposals for the reform of American municipalities.

Dr. Fairlie's book has many merits. It is clear, readable, and on the whole, accurate and scholarly. It is well arranged and there are very few repetitions. It will appeal to the wide class of readers interested in modern municipal problems, as well as to the scholar seeking a general survey of the field. The bibliographies at the beginning of each chapter are helpful, especially the references to magazine articles and monographs, which often escape the student who is not a specialist. In a work, however, which will appeal to the general reader as well as to the specialist, more definite references to the sources of the author's information would add greatly to the value of these bibliographies. The placing of by far the greater part of the notes at the head of each chapter, without specific indication in the text itself to the authority used, though it may be intelligible to one very familiar with the subject, is apt to prevent any checking of the author's statements. It is also unfortunate that Dr. Fairlie has not mentioned the edition he has used of such works as Gibbon, Stubbs and Hallam, which have been reissued several times since their first publication.

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The Anglican Episcopate and the American Colonies. Harvard Historical Studies, Vol. IX. By ARTHUR LYON CROSS. New York, Longmans, Green & Co., 1902. — 368 pp.

Dr. Cross's book fills a long-felt want in the field of American ecclesiastical history. We have excellent works on the histories of the various denominations in America, and in the field of Episcopalianism we have the more specialized treatment of the church in separate colonies and states, such as Dalcho's *Protestant Episcopal Church in South Carolina* and Beardsley's *History of the Episcopal Church in Connecticut.* But until the appearance of Dr. Cross's careful monograph we have had no adequate discussion — nothing, in fact, beyond a single short chapter in Mr. Sanford Cobb's book on *The Rise of Religious Liberty in America* — of the relations of the English Church to the American colonies in all their broad religious and political signification.

The chief merit of Dr. Cross's book is the very thorough acquaintance it shows with invaluable historical material on the other side of the water. Manuscripts of the British Museum, the Public Record Office, Lambeth and Fulham palaces have been searched with discriminating patience and coördinated with a large number of American sources to make a well-ordered, forceful, sympathetic narrative of the birth and struggle for life of the idea of a resident episcopate in the American colonies.

Another merit of the book, or perhaps another aspect of this same merit, is the skilful treatment of the political phase of the ecclesiastical question and of the constant and considerable influence of English politics on the agitation for American bishops. For example, at the outset Dr. Cross shows how in 1638 Archbishop Laud, as a part of his plan for the extension of the Anglican hierarchy to all the colonies, contemplated sending a bishop to New England, when the revolt in Scotland, the harbinger preceding civil war and the downfall of Charles Stuart, put an end to the projects of the high churchman. Again, in 1713 the Society for the Propagation of the Gospel in Foreign Parts had already obtained Queen Anne's pledge in support of a bill to be introduced into Parliament for the establishment of American bishops, when the death of the queen and the accession to power of the Whig ministry of Walpole frustrated the scheme of the church party.

Dr. Cross has dealt admirably with the difficult problem of the arrangement of his material, considering how inextricably interwoven are the local, the chronological, the intercolonial and the international

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(if we may so early use the term for the relations between England and the colonies) interests of the narrative. Only in one case does there seem to be a jolt in the evenness of the work; that is where a paragraph on Maryland is introduced into the midst of a discussion of the attempt of the New England divines to get a bishop (p. 105).

To come to the plan of the narrative, the author has first examined the origin of the claims of the Bishop of London to exercise diocesan control over the American colonies, and finds that there was no actual authorization for such exercise until 1727, when a commission was issued to Bishop Gibson under the broad seal of George II. An Order in Council of 1633 (part of the Laudian scheme above mentioned) had vested the churches of Delft and Hamburg in the Bishop of London, and by analogy a tacit recognition of the extension of the order to the American colonies grew up after the Restoration. Dr. Cross goes on to show how Bishop Compton (1675–1713) sought to strengthen his authority in the colonies by the appointment of commissaries and the enlistment of the interest of the Society for the Propagation of the Gospel (founded 1701); how the commissarial authority came into conflict with the legislatures of the colonies of the South, leading to the famous Church Acts of South Carolina; how during the century from Laud to Bishop Sherlock (1638–1748) several attempts were made by the English government, by clergymen in the colonies and by the Society for the Propagation of the Gospel to get resident bishops for the New World; how, after a lull during the Walpole ministry, the agitation was reopened in 1741, and how, from this time on, "a political significance gradually crept into the discussions"; how, as the Revolution approached, bitter controversies broke out, filling the decade 1760–1770 with the harsh monotonous cry of the pamphleteer; how finally the outbreak of hostilities severed the Episcopal Church in America from the Church of England, the connection to be renewed first by the thin thread of the consecration of Samuel Seabury of Connecticut (1784) by non-juring bishops in Scotland, and then by the stouter bond of the imposition of archiepiscopal hands on the heads of Samuel Prevoost of New York and William White of Philadelphia (1787). Therewith the Protestant Episcopal Church of America was founded and all official connection with the Anglican episcopate came to an end.

Just here the book seems open to adverse criticism in the matter of emphasis. The interesting and important subject of the establishment of the American episcopate after the Revolution is disposed of very summarily in a chapter of only nine pages, whereas the rather

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tedious and confusing antecedent controversies occupy nearly a hundred pages of the work.

As to the effect of the agitation for resident bishops on the revolutionary spirit itself, Dr. Cross concludes that it is a misconstruction of evidence to see in the Episcopal question "a cause of the Revolution, if one means an impelling cause." On the other hand, he admits that, as "religious affairs were closely involved in the political questions of the time . . . there was an ecclesiastical phase of pre-Revolutionary history of no little interest and importance."

Dr. Cross's study is supplemented by appendices containing valuable documents transcribed from English manuscripts, chief in interest among these being the correspondence between Bishop Sherlock and Horace Walpole and the Duke of Newcastle. A good bibliography of special works on the ecclesiastical relations of England with the American colonies, and an adequate index bring this most excellent volume to a close.

DAVID S. MUZZEY.

COLUMBIA UNIVERSITY.

The French Revolution and Modern French Socialism. A comparative study of the principles of the French Revolution and the doctrines of modern socialism. By JESSICA PEIXOTTO. New York, Thomas Y. Crowell & Co. — xv, 409 pp.

Dr. Peixotto's book deserves attention not only as a study in the comparative history of radical rationalism, but also as an attempt to treat doctrines and theories in connection with contemporaneous social facts and relations. The book, however, strikes one more as a discussion of certain similarities in the doctrines of the French Revolution and modern French socialism than as an exhaustive comparative study of the origin and psychology of the two movements.

The reader can gain an idea of Dr. Peixotto's position from the following statement (pp. 242–243):

> It will not do to press too far the parallel between the eighteenth century influences and those of the nineteenth, but when the chief changes in French social life during the nineteenth century are considered, it seems possible to find a certain similarity of causes. . . . In the nineteenth century as in the eighteenth, there can be noted in French life the rise and spread of new standards, more particularly the development of a new method of investigation, of a new ideal of government and of a widened sense of social responsibility. There can be seen, too, in this century as in the last, an unstable government which neither absolutely suppresses nor yet

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upholds these new ideals; there can also be found altered social conditions which, along with changed standards, have made more directly for the rise of another class, again impressed with its false position in society, again filled with a new appreciation of its own value and a new and pronounced desire for a better standard of living. Each of these influences seems to have played a determinative part in developing the character and enlarging the reach of modern French socialism.

The author treats her subject systematically and is intimately acquainted with the literature bearing upon it, but the presentation of the eighteenth century doctrines is throughout conventional. It is to be regretted that some very important books on Rousseau, as, for example, those of Liepmann and Haymann, which offer distinctly new interpretations of the position of that philosopher were not made use of. The author shows more originality in her treatment of modern French socialism. This last part is not only attractively written, but the criticisms advanced are interesting and suggestive (*e.g.*, the criticism of the Marxian social philosophy) (pp. 298–300) even where they seem to us quite wrong.

VLADIMIR GR. SIMKHOVITCH.

COLUMBIA UNIVERSITY.

Bundesstaat und Staatenbund. By PROF. LOUIS LE FUR and DR. PAUL POSENER. Erster Band: *Bundesstaat und Staatenbund in geschichtlicher Entwickelung.* Breslau, J. U. Kern's Verlag, 1902. — 384 pp.

This work originally appeared in French in 1896 under the authorship of Dr. Le Fur. A second French edition was brought out in the year 1900, and now with the collaboration of Dr. Posener, a German jurist, a German edition makes its appearance. The volume under consideration deals exclusively with the historical aspect of the subject, leaving the theoretical and philosophical treatment for the second volume, which, it is understood, will appear shortly. The authors leave us to frame our own definitions of the two terms which make up the title of their work, and without giving us even an inkling of the real character of the two state forms which they designate under the titles *Bundesstaat* and *Staatenbund*, plunge at once into an historical survey of such of the states of antiquity as belonged to either of these two forms of state organization. Our idea of the *Bundesstaat* is that of a federal state, or as Burgess would say with more scientific exactness, a state having the federal system of government,—for strictly speaking there can be no such thing as a federal state; while the *Staatenbund* is a confederacy or a league of

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independent states; in other words, it is no state at all, the essential attribute of a common sovereignty being lacking.

In addition to these two forms the authors enumerate the unitary state (*Einheitsstaat*), the composite state (*Zusammengesetztestaat*), the real union, the personal union, the vassal state and the protected state. The first is the consolidated state, of which the French Republic is a typical example. The classification of the other forms as states will not stand the test of sound political science. A close examination based upon proper canons of political science will show that they are forms of government simply. Thus the so-called personal and real unions are organizations for the government of two or more states through the same persons or institutions, but they are not themselves states. And so with the others. Besides the French Republic, the authors name Austria, Spain, Ecuador, Bolivia, Chile and Colombia as unitary states. The authors seem to be unable to classify Italy, except to say that it is not an *Einheitsstaat*. Austria-Hungary and Norway-Sweden are both described as real unions rather than personal unions. The German Empire, Switzerland, the United States, Brazil, Mexico and Venezuela are described as belonging to the *Bundesstaat* class, and the relations between the central and local governments in each state are intelligently explained. The kingdom of Hungary is also classified under this head, although the authors admit that the majority of publicists regard it as properly belonging to the unitary class, while still others put it in the class of real unions.

There is an interesting chapter on the United States as a typical federal state and the *Lehrmeister* of the world in federal law. The treatment, however, is not masterful and is marked by occasional errors, such as the statement that the ratio of representation in Congress is one to thirty thousand, that the President appoints and dismisses officers with the consent of the Senate, and that the circuit and district courts were created in 1869. The Southern Confederacy, along with the Union under the Articles of Confederation, is described as a *Staatenbund*, and Jellinek, Haenel and others are cited in support of this conclusion. But the fact is there is little or no comparison between the relatively impotent central power under the Articles of Confederation and that of the Southern Confederacy. Theoretically the individual states of the Confederacy may have retained their sovereignty, but practically all the recognized powers of sovereignty were exercised by the central government. It is far-fetched, therefore, to say that it was merely a league of independent states.

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The conclusion seems warranted by the teachings of history that the *Staatenbund* is destined to be superseded universally by other forms of political organization. As the authors have clearly shown, it has served a valuable purpose as a transitory stage of political development, but at present everywhere in Europe and America it has given way chiefly to the *Bundesstaat*, a higher and more perfect form. But the authors do not sympathize entirely with the view that the *Bundesstaat* is destined eventually to give way to the *Einheitsstaat*, although they readily concede that the latter form of organization has important advantages from the standpoint of external safety and internal stability. The tendency toward centralization in legislation and the reduction of the constituent members to the position of local governmental organizations, already strong in several of the more important states having the federal system of government, are evidence of a change in the direction of a higher form of organization. Certainly the old view of Montesquieu and Proudhon, that only the federal state, so called, is capable of reconciling the hostile principles of authority and freedom and of furnishing a good and permanent constitution, has lost much of its sanctity.

COLUMBIA UNIVERSITY. J. W. GARNER.

Western Civilization, II. Mediæval and Modern Times. By W. CUNNINGHAM, Cambridge, at the University Press, 1900. — 300 pp.

The task which Dr. Cunningham has undertaken in this little volume is to set forth in bare outline the chief forces and tendencies disclosed by an historical review of European civilization. It consists of three books, "Christendom," "Nationalities" and "The Expansion of Western Civilization." The first book is interesting for the emphasis it lays upon the survival of Roman tradition in mediæval Europe, and for the light it throws upon the essential unity of Christendom. Dr. Cunningham is not one of those who are inclined to interpret all historical phenomena in economic terms; consequently, one is not surprised to find that it is largely to unity of religion that the homogeneity of mediæval Europe is ascribed. Perhaps the most interesting chapter of this book is the one which treats of the "Christian Relations with Heathen and Moslem." It is sketchy, indeed, and lacks the fascination of the parallel part of Hunter's *British India*. It helps, however, to fix the thought that the trade relations with the East were not merely incidental, but formed an integral and important part of the economic life of mediæval Europe.

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A large part of the book on "Nationalities" sounds somewhat commonplace, since it is a repetition of what we have already been told again and again by Dr. Cunningham and other writers. Still the chapter on the "Rise of Capital" is well worth reading. It would be hard to find a better presentation of the familiar idea that it was the rise of capital in the modern sense of the term that freed the serf and brought with it the possibility of economic freedom. The last book, dealing with comparatively recent tendencies, is perhaps the least satisfactory, viewed as a mere contribution to science; but it possesses a distinct interest, since it conveys a great scholar's opinions as to present-day policies. Dr. Cunningham is an "imperialist"; but it is not on narrow and selfish grounds that he favors the policy of subduing the lower races. Civilized nations should extend their power over the barbarous races, not primarily in order to exploit new territories for the benefits of civilized society, but to promote the amelioration of native races and to protect them from the "energy" of the pioneers of civilization. The general tone of this, as of all of Dr. Cunningham's works, is a healthy Anglo-Saxon optimism. "We may take what test we like . . . there has never been an age that could compare with the present."

ALVIN S. JOHNSON.

COLUMBIA UNIVERSITY.

A Treatise on the Power of Taxation, State and Federal, in the United States. — By FREDERICK N. JUDSON. St. Louis, The F. H. Thomas Law Book Co., 1903. — xxiii, 868 pp.

Mr. Judson's book is, as its title indicates, devoted to the power which the different governments in our American system have of levying taxes. It is by no means a treatise on the general law of taxation in the United States. Further, it is much more nearly complete as a treatise on the taxing powers of the federal government than as one on the taxing powers of the state governments. It cannot, therefore, no matter what its value is, be expected to take the place of the standard works of Burroughs, Cooley, and Desty.

At the same time there is unquestionably a place for it. While the very subjects with which it deals are treated in the works of the writers mentioned, these subjects were much in need of a more up-to-date treatment. The recent experiments made in taxation, by both the federal and state governments, have been many in number and interesting in character, and have made necessary a reconsideration of many of the legal and constitutional doctrines which had been enunciated by the supreme judicial authorities of both governments.

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It is only necessary to consider the income tax, the express company tax and the recent insular cases, to become convinced of the importance of the recent decisions on this branch of constitutional law.

It is as an exposition of this recently judge-made law that Mr. Judson's book is of the greatest value to the student of the constitutional law of taxation and to the practicing lawyer. Neither of these classes of persons must, however, expect any very full treatment of the decisions of the state courts on these subjects. Mr. Judson says in his preface:

> It is the aim of this work to show the limitations of the taxing power of the state and of the federal government so far as these limitations have been declared and expounded by the Supreme Court of the United States. Decisions of the state courts and inferior federal courts have been cited as applying or illustrating the limitations thus declared. These limitations fix what the state *can* tax.

Mr. Judson means of course by this statement that he has endeavored to show what the state can tax under merely the limitations upon its power contained in the United States Constitution. For it may very well be, indeed it actually is, true in a number of instances, that while the state as a member of the American Union may impose a given tax, the state government may not, under its state constitution, levy that tax. Thus the Supreme Court has declared that the United States Constitution offers no objection to progressive inheritance taxes; but the supreme courts of a number of the states have held that such taxes are improper under the particular state constitutions.

The most interesting portions of Mr. Judson's book are those which relate to the state taxation of interstate properties, which has become a peculiarly important subject, owing to the modern tendency towards railway and industrial combination generally (Chapter VIII); the limitations imposed upon the powers of the states by the adoption of the Fourteenth Amendment (Chapters IX and X); the necessarily public purpose of taxation (Chapter XII); and due process of law as affecting assessments for local improvements (Chapter XIII). It is shown that the recent decisions of the Supreme Court permit methods of assessing property of interstate corporations which, while not resulting in a technical taxation of interstate commerce, do actually permit the states to obtain large revenue from the taxation of such corporations, a result which it was impossible for them to reach so long as they attempted to tax earnings. It is also brought out that the Fourteenth Amendment permits of quite arbitrary methods in the assessment and collection of state taxes; that the courts, particularly

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the Supreme Court of the United States, are permitting the levy of taxes for purposes which not so very long ago would not have been regarded as public; and that, notwithstanding the recent attempt of the Supreme Court in the rather famous case of Norwood *vs.* Baker to control the discretion of the state legislatures in their attempt to distribute the burden of assessments for local improvements, that august body has since this "wobble" fallen back again on its old rule, which is practically to regard as "due process of law" the law passed by the legislature of the state whose law is under consideration.

Before closing this notice of an interesting and excellent book, attention must be called to the appendix, which contains in addition to the Constitution of the United States, set forth *in extenso*, what purports to be a collection of the provisions in the constitutions of all the states which limit the state's taxing power, with the exception of those relating to rates of state and municipal taxation. Such a collection should be of the greatest value to the student of the constitutional law of taxation.

F. J. GOODNOW.

A History of the English Poor Law. From 1834 to the Present Time. By THOMAS MACKAY. New York, G. P. Putnam's Sons; London, P. S. King & Son, 1900. — xv, 617 pp.

Chalmers on Charity. A Selection of Passages and Scenes to illustrate the Social Teaching and Practical Work of Thomas Chalmers. Arranged and edited by N. MASTERMAN, M.A. Westminster, Archibald, Constable & Co., 1900. — xxii, 413 pp.

The Christian and Civic Economy of Large Towns. By THOMAS CHALMERS. Abridged, with an introduction by Charles R. Henderson. New York, Charles Scribner's Sons, 1901. — 350 pp.

The publication of these three volumes places at the service of the modern student of pauperism and charities the material which he has long most seriously needed. Nicholls's standard *History of the English Poor Law* brought the narrative and analysis down to the Poor Law Amendment Act of William IV in 1834. No connected and scientific account of the working of that great experiment from 1834 down to the present time was available for either the general reader or the professional student. The student, in fact, was obliged to make laborious search through official documents to obtain even the most general outline of the methods and results of English Poor Law administration for half a century. In saying this we do not overlook the excellent work of Aschrott and Preston-Thomas. But these

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authors give attention chiefly to matters of organization. They do not enter upon that full discussion of expediency or attempt that thoroughgoing examination of results which distinguish Sir George Nicholls's work. Mr. Mackay has written in the spirit of the work of his great master, and it is simple justice to say that he has worthily and successfully continued not merely the narrative, but also the clear illuminating analysis and the judicial weighing of every significant detail, which made Nicholls's pages the most remarkable of all monographic studies in social science.

Although the period which Mr. Mackay has covered is short in comparison with the centuries that Sir George Nicholls reviewed, it has been one of unprecedented activity, and changes have occurred in knowledge, in economic conditions and in political relations, which in magnitude have no parallel in former ages. In this period of intense life the Poor Law Amendment Act has been put to a practical test such as few legislative enactments have been subjected to, and few sober students of social problems will deny that very rarely indeed has the practical wisdom of any body of men been more triumphantly vindicated than has been that of the famous Poor Law Commission of 1832–1834.

We have not, however, yet escaped from that rhythm of alternating common sense and sentimentality which is seen so clearly in Nicholls's narrative of the poor law experimentation down to 1834. In recent years there has been a strong reaction against those principles of individual liberty and personal responsibility upon which the Poor Law Amendment Act was founded. Sentimentalists and socialists have united in the demand for innumerable measures, including old-age pensions and national workshops supported by taxation, the effect of which would be completely to undermine the Poor Law, as framed in 1834, and which ignore all the lessons so convincingly set forth in the great report of the Commission. These issues Mr. Mackay has dealt with fairly and fully.

The writings of Chalmers on the practical treatment of pauperism have too long held their place among the most penetrating studies of this subject ever made by one individual, to call now for anything in the nature of analysis or review. The two works which we have named above present in a convenient form all that is essential in Chalmers's writings. The selections in Masterman's volume cover a wide range of interest, while Professor Henderson's edition of *The Christian and Civic Economy of Large Towns* gives nearly all of Chalmers's most important single work. No important idea is omitted,

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and where omissions of matter of merely local or transitory interest have been found necessary they have been indicated in the typography. Professor Henderson has written an admirable introduction, in which Chalmers's doctrines are analyzed and subjected to that criticism which has been made desirable by the change in social conditions consequent upon the development of the century.

FRANKLIN H. GIDDINGS.

Poverty, a Study of Town Life. By B. SEEBOHM ROWNTREE. London, Macmillan & Co., 1902. — xii, 426 pp.

Public Relief of the Poor. By THOMAS MACKAY. London, John Murray, 1901. — vi, 214 pp.

Report of the Proceedings of the Third International Congress for the Welfare and Protection of Children. London, P. S. King & Son, 1902. — xxviii, 348 pp.

The Care of Destitute, Neglected and Delinquent Children. By HOMER FOLKS. New York, The Macmillan Company, 1902. — viii, 251 pp.

No book since Booth's *Life and Labour of the People of London* has attracted so much attention among English students of social questions as Mr. Rowntree's *Poverty*, already in its fourth edition. The town life studied is that of York with its 75,000 odd inhabitants and its fairly typical quota of manufacturing, transporting and mercantile industries. The author made, through a paid agent, a house to house canvass of the poorer sections of that city and collected information in reference to 11,560 separate families, living in 388 different streets and including 46,754 persons. This information and conclusions drawn from it are presented in ten chapters dealing with such topics as the Social and Economic Condition of the Wage-Earning Class in York, the Standard of Life, the Poverty Line, the Immediate Causes of Poverty, Housing and Family Budgets.

Besides giving a realistic picture of the way in which two-thirds of the people of York live, the book throws useful light on the extent and causes of poverty. At the very outset the author makes a distinction between two sorts of poverty, primary and secondary. The former is poverty due to the insufficiency of the family income, and is measured by comparing the actual income with the minimum expenditure necessary to the maintenance of health and efficiency. To calculate the latter the author makes use of Professor Atwater's

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tables, and of a standard dietary conforming to them, and similar to a dietary used in English workhouses. He finds that the minimum expenditure for food for a family of five in York should be *12 s. 6 d.* a week, and that other necessary items raise the total minimum expenditure to *21 s. 8 d.* a week. By applying this standard to the incomes, partly ascertained and partly estimated, of the 11,560 families investigated, he shows that 1,465 of them, including 7,230 individuals, have less than is required, and consequently live in a condition of primary poverty. Comparing the above figures with the total population, he concludes that 9.9 per cent of the people of York live in primary poverty, and that these constitute 15.46 per cent of the wage-earning class. This is the submerged tenth.

Mr. Rowntree's test of secondary poverty was the actual living conditions found to prevail in the different homes visited. The investigator concluded from his inspections that some 20,402 were, as a matter of fact, living in poverty. As 7,230 of these were found, by means of the other test, to be suffering from primary poverty, it followed that 13,072, constituting 17.9 per cent of the population, were living in secondary poverty. The total number found to be living in poverty constituted 27.8 per cent of the population and 43.4 per cent of the wage-earning class. Comparing these figures with those arrived at by Booth, it appears that both as regards the "very poor" and the "poor," London conditions are somewhat worse than those of York, Booth's figures for the whole metropolis being 12.4 per cent "very poor" and 30.7 per cent "poor." The results are sufficiently similar, however, to corroborate each other. Mr. Rowntree considers that the investigations together establish the facts that nearly 10 per cent of the people of England are living in primary poverty, and that from 25 to 30 per cent suffer intermittently because of the insufficiency of their resources.

As to the immediate causes of primary poverty in York, his inquiry indicates the following: in 20.6 per cent of the cases the cause was the absence, death or disability of the head of the family; in 22 per cent, the largeness of the family (there being four or more children instead of the normal three); and in 51.9 per cent, the insufficiency of the earnings of the head of the family. Light is thrown on the more remote causes of poverty in the chapter on Housing and the supplementary chapter in which public houses, poor relief and similar topics are considered.

Although most of the reasoning of the book is unobjectionable, fault may be found with the method adopted for testing primary

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poverty, especially as it leads to the conclusion that the ordinary earnings of even the regularly employed manual laborer in York are too small to maintain him and his family in health and efficiency, though spent in the most judicious manner. If this were in truth the case, rapid deterioration of the laboring class must ensue, and that this is not in progress for England as a whole seems to be shown by other evidences. Mr. Rowntree's mistake seems to consist in a too ready acceptance of calculations based on American conditions as applicable to the people of York. Climate, standards of living, *etc.*, all combine to make the minimum consumption necessary to the efficiency of the American workman higher than that required by his English brother. A lower standard of necessary expenditure would have reduced somewhat the proportion of primary poverty. It would not have affected, however, the conclusion as to the extent of poverty in general; so the error, if error there be, is not of great practical importance.

This hasty review of Mr. Rowntree's study gives a very inadequate picture of the wealth of information which it contains, and of the careful analyses to which this information is subjected in order to deduce from it the conclusions arrived at. The book fully merits the attention it has received.

Dissatisfaction with the administration of the English Poor Law, which appears in Mr. Rowntree's sections dealing with that subject, is even more characteristic of the second book under review, Mr. Thomas Mackay's lectures on the *Public Relief of the Poor*. As readers of Mr. Mackay's other writings were prepared to find, his lectures represent the Poor Law as a compromise between the system of status characteristic of the feudal period in English history and the modern system of free contract. His main contention is that the maintenance of the Poor Law is itself the chief cause of the persistence of pauperism, and that a vigorous policy of limiting public relief, at first to indoor relief, and finally to the defective classes only, would serve to dispauperize the community. The first four lectures in the volume are historical and add little except in form of presentation to the author's valuable *History of the English Poor Law*, constituting Volume III of Nicholls's standard work. Chapter V discusses in a suggestive way the relation between legal and voluntary agencies of relief, while Chapter VI gives the author's view of the future of public relief. How little encouragement he finds in the present situation is indicated by his characterization of the recent agitation for old-age pensions:

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An influential politician, without thinking out the practical difficulties of the question, makes a proposal, and thus sets the ball rolling. The proposal creates great enthusiasm among the groundlings. Other politicians follow suit. The party managers think that there are votes in it. Electioneering cards are printed wholesale, which even get distributed in support of candidates who afterwards find it necessary to disavow the policy attributed to them. The opposition dare not oppose. They either ignore, or offer to go further than the original proposal. Even those on both sides who know that the proposal is mischievous and impracticable dare not denounce the whole transaction. They confine themselves to saying that they are in favor of the principle of increased public relief to the aged, but that they have not seen any practical scheme.

Thus public relief and politics are hopelessly entangled and the prospect of reform along the line Mr. Mackay advocates is small. Nevertheless his lectures are valuable as a forcible argument in support of the *laissez-faire* policy as applied to the public relief of the poor.

More encouraging are the other two works under review. The Third International Congress for the Welfare and Protection of Children was a notable gathering, and the papers presented attest the intelligent interest that is now being taken in the care of that class of dependents. Among the topics dealt with were: "The State and Parental Control," by Mr. C. S. Loch of the London Charity Organization Society; "The American System of Probation Officers," by Miss Ada Eliot of New York; "Free and Compulsory Education," by Mr. T. G. Rooper, English Inspector of Schools; "The Reform of Young Criminals," by M. Paul Flandrin of Paris, and Miss Rosa M. Barrett; "The Boarding-out System," by Miss Mason, Senior Inspector of Boarded-out Children in England; and "Mental Defectives, their Classification and Training," by Dr. Martin W. Barr, of the Pennsylvania Institution for the Care of Feeble-Minded Children. The papers on the treatment of special classes of the defective were particularly valuable, and indicated the progress that is being made in educating the blind, the deaf and the feeble-minded. As a whole, the congress easily surpassed in attendance and in the quality of the discussions any previously held.

Mr. Folks's *The Care of Destitute, Neglected and Delinquent Children* is a work of more direct interest to American students. It is the first of a series of volumes to treat of various phases of American philanthropy of the nineteenth century, and sets an example of thoroughness and fairness, which, it is to be hoped, other writers for the series may imitate. The book is divided into twelve chapters, of which seven

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are historical and four treat in a critical way of special methods of dealing with destitute children. The concluding chapter discusses present tendencies. It will suffice to say of the historical material that it is comprehensive and furnishes for the first time to the American student a sketch of American charitable activities during the last century in behalf of dependent children. The information referring to New York is particularly full, as was to be expected from the author's position as Commissioner of Charities for New York City.

The topics considered in the critical chapters are the "State School and Placing-out System," the "County Children's Home System," the "System of Public Support in Private Institutions" and the "Boarding-out and Placing-out System." From his study of these four rival systems, the author inclines strongly to the State School and Placing-out System, introduced first by Michigan in 1874, and found at present in twelve of the states. The great merit of this system is that it offers the minimum inducement to parents and guardians to rely on public relief for the support of their children, while at the same time it guarantees intelligent care of those children who do become wards of the state. Its superiority to the county system of institutional relief is indicated by the fact that in Indiana, where that system is being tried, ten times as many children are paupers, in proportion to the population, as in Michigan. The state system has also been conspicuously successful in finding homes for children requiring public relief. This result is probably due, however, less to the system than to the fact that the states adopting it are, for the most part, agricultural and therefore favorable to the success of any intelligent plan for the placing-out of children.

Although he believes that the state system of relief will in time become general, just as has the state system of caring for defectives, Mr. Folks thinks that it would be unwise for the present to undertake to introduce it in a state like New York, which has long been committed to the policy of subsidized private institutional relief. He points out that with more rigid inspection and supervision the latter system is susceptible of very great improvement, and concedes that it should be given further trial before it is abandoned.

The four books reviewed are included in a single notice chiefly because of the contrasts they present. Mr. Rowntree's picture of York and Mr. Mackay's sketch of the development of the English Poor Law serve to place in strong light the prevalence of poverty and the ineffectiveness of governmental efforts to remedy it. The *Report of the Children's Congress* and Mr. Folks's work, on the other hand,

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ELECTRONIC REPRODUCTION PROHIBITED

bring out with equal clearness the really remarkable progress that has been made during the century in caring for at least one class of dependents, — destitute and defective children. Together the four works supplement one another, and leave the reader in that state of aggressive optimism that is most favorable to progress.

HENRY R. SEAGER.

Über Kartelle. By DR. JOSEF GRUNZEL. Leipzig, Duncker & Humblot, 1902. — viii, 330 pp.

Das Grundgesetz der Wirthschaftskrisen und ihr Vorbeugmittel im Zeitalter des Monopols. By R. E. MAY. Berlin, Ferd. Dümmler, 1902. — 146 pp., with six tables.

The public has become so familiar with the spread of the trust or consolidation movement in America and Great Britain that it will come almost as a shock to many to learn that industry on the continent of Europe is organized in a form of combination in which fusion constitutes an exceedingly small part. The failure of terminable associations in Britain and the United States has been so flagrant that it must be surprising alike to the economist and to the business man to see that in other countries the kartell or syndicate can, and will apparently for a long time, hold the trust at bay. Yet there are known to be in Germany at least 300 such kartells (Herr May estimates 500), 80 dealing with trade and 220 with production, and of these 80 belong to the metal industries, 40 to glass, stone and clay, 30 to the chemical industries, 20 to textiles and 10 to coal, food and paper. There are at least a hundred in Austria; they are dominant in France, and all the new industries of Russia are syndicated. Dr. Grunzel gives a very full account of the development of kartells in Austria, a fairly full account for Germany and Russia and a rather sketchy description of the movement in other countries. We may add that there are a large number of kartells of different kinds in Britain — a fact with which Dr. Grunzel is imperfectly acquainted, to the detriment of some of his theorizing. One important feature, however, differentiates the British kartells from similar organizations on the continent, — their smaller power over their members; in fact their resolutions are advisory rather than mandatory. Leaving Britain out of account we still have a movement of remarkable extent and importance, and every one who feels concern at the part which Germany is taking in the world commerce and at the growing strength of Austria and Russia will do well to study very carefully Dr. Grunzel's admirable

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book. As secretary of the Central Union of Austrian Industrialists, he has occupied a position which every student of industrial organization must envy him, and he has utilized his opportunities in a way which should evoke the hearty gratitude of every economist. His classification is thorough and is illumined with extracts from by-laws and with examples which would scarcely have been available to any one else. It is hardly possible to run into overpraise, but we will content ourselves with saying that the book is indispensable to every student. On some points, it is true, it is open to criticism, but these do not seriously detract from its great merits.

Taking his definition of a kartell or syndicate as a voluntary association of independent manufacturers formed to regulate production and prices, we see that it is a form applicable to a great variety of purposes. The contract of agreement is framed for a term of years, usually from one to five, and is enforced by penalties detailed in the stipulations. Dr. Grunzel thinks that the kartell and the trust are not merely different stages of development of the same principle of association, but that they are essentially different in nature; and he bases this opinion partly on the terminable character of the kartell and partly on the fact that the kartell is applicable only to business in the same industry, whereas the trust may include several industries. On this point we are compelled to decide against him, because not only does an unsuccessful kartell generally precede the formation of a trust, but several British examples can be given, notably J. & P. Coats, Limited, where the trust or amalgamation has actually grown out of a syndicate, — a development which, Dr. Grunzel says, has never taken place on the continent. In an ascending scale Dr. Grunzel classifies kartells according as they regulate the conditions of sale, fix prices, limit output, divide territory, divide output, conduct a common sales' agency and facilitate export. All these regulate supply, but they may, in any of their forms, also regulate demand either for labor or raw materials. The first two classes are those with which combination generally begins, but as they do not deal with the problem of overproduction they usually fail. Limitation of output is also a temporary expedient to remedy an evil after it has come into being, while division of the market is only possible in exceptional circumstances, such as international kartells. There is thus a steady impulse towards the formation of the two highest forms of kartell, — the division of output and the sales' agency. In the former production is reckoned over a period of three or five years, and the total thus ascertained is taken as the basis for production throughout

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the duration of the syndicate; each of the associated firms produces its former quota, and new business is divided in the same proportions; in another and higher form a proportion of the profits is paid into a common fund and shared in an agreed proportion, thus automatically repressing individual overproduction. The sales' agency includes the allocation of output, and in its highest form buys from the several establishments their produce at a "normal" price and divides the surplus actually obtained in the ratio of output. The export kartell is to some extent a cross division, but its separate enumeration is justified by its object. Either the home market is to be cleared of an existing glut, or a surplus is produced for export in order to keep the home mills running full. Dr. Grunzel justifies the sale of goods abroad below the home price on the ground that by the economies resulting from the greater output the cost and price of the goods sold at home are also reduced. Yet here he disregards certain evils; thus Herr May reports German glass workers as explaining the reduction of their trade in 1901 because "neighboring countries can get German coal cheaper than we can up the country, and this continually pushes our industry out of the world market."

Dr. Grunzel is also inclined, we think, to underestimate the extent to which kartells force up prices and to undervalue the impulse which their terminable character gives to extortion. A trust, being permanent, can afford to take long views, but a kartell must exploit the passing moment. Since he is a firm believer in kartells as an improved form of industrial organization, and claims that they are a necessary outcome of the desire to escape the ruinous effects of competition, Dr. Grunzel naturally does not think that free trade would prevent or destroy them. Nor does he approve of giving a government power to reduce the tariff if a trust or syndicate raises prices, since that would injure the non-associated manufacturers, and the existence and uncertain exercise of such a power would seriously disturb trade. But he holds that a syndicated industry, through its greater economy of production, requires less protection than one in which the manufacturers are all independent, and that this should be taken into consideration on the normal revisions of treaties and tariffs. This is a useful point for American politicians. Examination of business books by government officials, he thinks, would prove futile, owing to the lack of detailed knowledge on the part of the inspectors. For the same reason he condemns the proposal that resolutions relating to prices and output should be submitted to a government department for approval. Even the communication of

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these resolutions for information and record would, in his opinion, prove a mistake, since if no action were taken official approval would be assumed.

These are all criticisms worthy of consideration, but Dr. Grunzel's contributions to the subject of state control are not merely negative; he has positive proposals as well. Every kartell, no matter what its purpose or form, should, as a condition of legalization, be compelled to register itself and deposit its by-laws and amendments of them with a state department for publication. Such registered kartells would have full legal capacity, including the right to sue; on the other hand, the department would have power to require explanation of any transaction regarding which complaint should be made, or to make inquiries on its own initiative whenever it should deem public interests to be affected, and if improvement should not be made, registration might be canceled and the business activity of the kartell seriously hampered, if not destroyed. A trust could hardly be resolved into its original elements, but yet it seems not impossible to extend with much advantage Dr. Grunzel's method of control to trusts as well as to kartells. In any case his suggestion is a valuable one and remarkable, coming from a man in his position.

Herr May's book is useful were it only that incidentally it gives some striking details as to the effects of the kartells on German trade and industry, especially in the coal and iron industries in 1900–1901. He also gives from official sources lists of average prices in Hamburg, and Germany generally, which are valuable apart from the purposes for which they are quoted. In another aspect the book is interesting. Herr May is a follower of Bernstein in professing socialist doctrines less rigid theoretically than the true Marxian faith, and it is curious evidence of the flux of thought in Germany that he regards nationalization of industry as impossible, owing to the growing tendency of trusts to become international. Doubtless he exaggerates the tendency, and the development is too young yet for any one safely to dogmatize; still it is a new point to consider. His main thesis is that an industrial crisis must arise whenever prices cease to fall and wages to rise, together, in equal proportion to the productivity of labor; when this want of relation occurs there is "overproduction." This is simply another way of stating the view, much held of recent years, that "overproduction" is but another name for "underconsumption," brought about by the mal-distribution of incomes. He holds that the productivity of labor, which is steadily increasing, is absorbed by the increase in the profits of capital, the

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ELECTRONIC REPRODUCTION PROHIBITED

increase in unemployment owing to the use of machinery, and the rise in the cost of existence owing to the advance in prices, — tendencies which are hastened by the growth of trusts. A long series of index numbers are examined to show that high prices have always introduced a crisis, and he certainly has the support of the Industrial Commission in saying that trusts tend to widen and retain the margin between cost of production and sale prices. On the other hand, he does not seem sufficiently to discriminate between the cases of the United States and Germany. With the persistent growth in the home demand unemployment has not increased in the former, while the industrial crisis in Germany was precipitated by reckless financing. The necessity of a highly paid working class to tend costly machinery, the compulsion on the trusts not to offend the political power of the workers, the modern trade principle of stable prices as shown in the policy of the Steel Trust — these, too are points which modify his conclusions to an extent which he has not fully considered.

Passing over these points there still remains a great deal of truth in his views. His remedy is the legal limitation of the profits of capital to seven per cent, an additional one per cent being allowed where it is shown that an increased productivity has been aimed at, and a similar deduction being made where there has been no such attempt. We can add to his arguments the legal regulation of railway rates and gas profits in Britain, and the fixed freight rates recently stipulated for by the New Zealand government in establishing the new steamship line to Cape Colony. As Herr May himself admits, the subject is a very difficult one, and provision would have to be made to prevent evasion in the shape of stock watering, excessive or secret reserves, *etc.* Yet at the present moment every suggestion is to be welcomed, and Herr May's arguments deserve consideration. Finally, in view of the development of export kartells in Germany, already referred to, it is interesting to observe that Herr May, after examining German export trade in detail, concludes that it is "unimportant compared with the home production and not fitted to act as a safety valve in case of a glut in the home market."

HENRY W. MACROSTY.

LONDON, ENGLAND.

Credit. By J. LAURENCE LAUGHLIN. University of Chicago Press, 1902. — 4to, 28 pp.

Professor J. Laurence Laughlin, in a brief monograph constituting one of the "Decennial Publications" of the University of Chicago,

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expounds a new theory of credit. He defines credit as being "in its simplest terms a transfer of commodities involving the return of an equivalent at a future time." "Strip any credit operation whatever of its passing and superficial marks," he says, "and you will find in its essence that it is a transfer of goods involving futurity." Throughout the first part of the monograph he seeks to establish this proposition and to show that credit does not in any way rest upon money. The following sentences give a clue to his argument: "Credit enables men to coin property into means of payment." "The popular impression that a man borrows 'money' is misleading." "The sums to be loaned, although expressed in dollars, represent goods which lenders are willing to hand over to borrowers." Money is of so little consequence that banks keep only enough of it "to meet the demands of those suspicious or frightened persons who may wish to turn goods into actual cash," — certainly an interesting view of the *raison d'être* of banking reserves.

According to Professor Laughlin, "normal credit cannot raise general prices. Goods exchanging against each other with the tags of prices attached to them do not act differently from those without such tags." "Credit does not change the relation between gold and goods." Although it increases the purchasing power of a community, it increases the supply of goods sold in a corresponding degree. The supply of goods, from one point of view, is the demand for goods. Credit simply enables goods to be used as a medium of exchange. In his language, it sets "into circulation a vast amount of property and commodities, which otherwise must remain an inert mass in the hands of owners." "A general increase of purchasing power, arising from normal credit, acts upon prices in no other way than would an increased production of all goods. It is the case where general supply is identical with general demand: an increase of supply is, *ipso facto*, an increase of demand."

Does Professor Laughlin mean that the increased purchasing power which credit renders available in a community tends to lower the level of prices? He appears to favor this conclusion, for immediately after he has demonstrated that credit swells both demand and supply equally, and so cannot affect prices, he insists that it certainly has no power to lift prices, and then remarks:

> Does credit change any of the elements entering into the normal expenses of production of any article? If it does not, how can it be said to have any distinct effect on general prices? Goods already produced cannot be influenced as to their expenses of production by new means of exchanging them;

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if it affects price at all in that way it would be by reducing price through greater efficiency of exchange.

Having thus shown that credit, if it affect prices at all, must lower them, he discusses the relation of credit to the demand for gold, and concludes that "in so far as normal credit can be said to change the demand for gold, it works to lessen the demand by furnishing another means of exchanging goods." He admits that anything which lessens the demand for gold will tend to raise prices, but he thinks this point of no consequence, for

> to-day the demand for gold is a fact based upon the existing customs and methods of society; and one of them has long been the use of credit. To reason on what would happen if it were absent would be like reasoning on a change in human nature. . . . At the best, it could be said that credit, by its enlarged use, has saved gold from being more and more needed as a medium to be passed from hand to hand in the actual exchange of goods; but there is no reason to suppose that human intelligence would not have devised something else to serve its purpose if it had not utilized credit.

Here we appear to have three warring conclusions: (1) that credit does not affect prices; (2) that credit, if it does affect prices, lowers them; (3) that credit "indirectly" raises prices through lessening the demand for gold. This last conclusion is unimportant for the peculiar reason that credit, like gravitation, has been an influence so long that we can now afford to ignore it. As for the second conclusion, it is possible that the author has in mind the enlarged production of goods made possible by credit as an instrument for the utilization of capital, but he does not express this thought. Credit does increase the productive capacity of a community, but gold shares the benefit equally with other goods. Thus credit lowers costs, not prices.

By "normal credit" Professor Laughlin means the coinage of goods into present means of payment in amount no greater than the value of the marketable goods owned by the borrower. When goods are coined into means of payment exceeding the value of the goods, credit becomes "abnormal." Normal credit becomes partially abnormal whenever goods shrink in value. Abnormal credit leads to a rise of market prices, to speculation and finally to panic.

> The enlarged demand due to abnormal credit combines both the real and a false demand; and general supply is increased to meet the combined demand. . . . The goods offered serve as a total demand at prices offered for the supply; and the goods forming the supply serve as a total supply at the prices exacted. Then comes the pricking of the bubble. The false demand disappears. The value of the general supply is now vastly greater

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than the value of the shrunken general demand. . . . The outcome is that in many industries a vast mass of goods exists in supply out of all proportion to a legitimate demand based upon salable goods. It is in such circumstances as these, we shall find, that means of payment are created, based again on goods, such as clearing-house certificates; or, as in England, by obtaining new reserves of notes based on consols by a suspension of the Bank Act. In short, a panic demonstrates that credit transactions are really based on goods; that liquidation never can be forced in money.

Here we have a novel demonstration. When credit is unduly expanded, people are unable to get enough money to redeem their promises to pay money; hence property is the thing upon which credit is based. This logic is Hegelian in its subtlety. What seems to be a very simple thing viewed in the concrete, emerges from the crucible of Professor Laughlin's theory incomprehensible.

It is not possible to criticise fairly a fragment of a theory, and that is all a theory of credit can be if it does not include a theory of money. One who is not prepared to admit that money is merely a "wrapper" or "tag," as Professor Laughlin calls it, will be unable to walk a single step with him in his theory of credit. His view of money seems to be fundamentally erroneous. Money is much more than the wrapper in which our goods come to us. He is right in saying we do not want it for itself, but that fact does not make it a negligible quantity in exchange. A farmer does not want a hoe for itself, yet he does not think of it as a mere stick that turns up potatoes. Money, like any tool which men use, performs a distinct service, and is wanted and has value on account of that service. Professor Laughlin's subtle argument to show that credit does not affect prices because an increasing demand for goods will be accompanied by an increasing supply, merely proves that credit cannot affect the values or exchange relations of goods in general. That is a proposition which nobody will deny. His definition of credit is vague and loose. To call it "the coinage of property into means of payment expressed in terms of money" is misleading because inexact and inadequate. Credit is the power to buy goods by giving a promise to deliver in the future, not property, coined or uncoined, but money. Professor Laughlin, in this monograph gives one the impression that he regards money as being a mere yardstick with which men determine how much value goods possess, and one is forced to infer that, if there were no "suspicious or frightened persons" demanding cash instead of coined property, a single dollar in a glass case at Washington would be an adequate monetary stock for the whole country. This essay on

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"Credit" needs to be supplemented by one on "Money." So acute a thinker as Professor Laughlin, when he presents his complete theory, will doubtless be able to clear away some of the inconsistencies and contradictions which this monograph seems to contain.

JOSEPH FRENCH JOHNSON.

UNIVERSITY OF NEW YORK,
NEW YORK CITY.

Funds and their Uses. By FREDERICK A. CLEVELAND. D. Appleton & Co., 1902. — xiii, 304 pp.

Under the above title Dr. Cleveland has written "a book describing the methods, instruments and institutions employed in modern financial transactions." The work is apparently destined for use as a text-book, and appears as one number of Appleton's Business Series. The author, in his preface, gives us not only the reason for his treatment, but also its scope. The subject of finance has been treated, up to the present time, too exclusively in respect to its public aspects.

> The fast increasing funds in private institutions, the magnitude of modern industrial or commercial undertakings, the large funding operations wholly private in their character that have gone along with private enterprise during the last decade, have awakened an interest in private finance far exceeding that which attaches to public revenue and expenditure.

It is the need of elucidation in this field of finance which has given birth to the present work.

> Looking upon the subject of private finance as one which has to do with the getting and spending of funds for private enterprise, the materials of this book have been grouped around three central ideas, *viz.*: (1) what are funds? (2) how funds are obtained; (3) the institutions and agencies employed in funding operations.

The book is not only well written, but also well edited. The author keeps very closely in touch with the business world in the treatment of his subjects. A marked feature of the volume is its numerous engravings of checks, notes, scrip, drafts, bonds, *etc.*, — 114 altogether, — which, supplemented by constant references to and illustrations of business transactions, make the work one of special clearness. A further aid in this direction is also the use of marginal explanatory headings.

Unfortunately the engravings are so reduced in size as to make it difficult or impossible to read many of them. This, however, could hardly be otherwise without increasing the volume to an unwieldy

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and expensive size. Possibly lists of "suggestive questions" might have still further increased the usefulness of the work, — especially as a text-book. A subject like "funds" naturally lends itself to such treatment.

The entire absence of bibliography or bibliographical references might also be regretted, although the desirability or necessity of such references is not so apparent in a work on "funds" as it would be in the treatment of many other subjects.

GEORGE M. FISK.

UNIVERSITY OF ILLINOIS.

The American Merchant Marine: Its History and Romances from 1620 to 1902. By WINTHROP L. MARVIN. New York, Charles Scribner's Sons, 1902. — ix, 444 pp.

American Navigation: The Political History of its Rise and Ruin and the Proper Means for its Encouragement. By WILLIAM W. BATES. Boston and New York, Houghton, Mifflin & Co., 1902. — xvi, 466 pp.

La Navigation Commerciale au XIX^e Siècle. Par AMBROISE COLIN. Paris, Arthur Rousseau, Editeur, 1901. — viii, 459 pp.

Among the many signs of reviving interest in American shipping is the quantity of literature bearing on the subject now appearing in books and periodicals. Mr. Marvin's book, the latest and one of the best histories of our merchant marine yet published, shows the marks of careful research. It is agreeably devoid of many of the exaggerations and fictions so common in books of its kind. The author does not overstate the effects of the hostile acts of the British government nor the unfair discriminations later practiced by Lloyds in listing and insuring American vessels. No doubt both of these causes did operate very powerfully at different periods to put our ships at a disadvantage in competing with English ships. Yet it is admitted that English vessels would probably have won an ultimate victory over our own unless we resorted to ship protection. The weak point in the treatment is the assumption that ship protection by means of subsidies or discriminating duties will build up the marine so that it can stand without such protection. No doubt English mail payments did help to enrich some individuals and to establish certain steamship lines; but subsidies certainly did not create the cheap and efficient British cargo steamers which make up nineteen-twentieths of the English merchant marine of to-day. Instead of aiding, payments in the nature of subsidies have actually

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hindered these tramp steamers and slow-going, regular freighters. The author thinks that if we had met subsidy with subsidy we might have beaten the English at their own game. There is not the slightest justification for such a belief, for England possessed every advantage for cheap construction, and was better able to pay subsidies than we. Besides she had colonies, a surplus of manufactures to sell and a redundant population. The idea that the United States could have carried on successfully a peaceful subsidy war, so to speak, with the wealthiest and most highly industrialized nation on earth, is hardly worth the trouble of refuting. England had every advantage after the advent of the iron steamer. Even the phenomenal development of our wooden sailing ships was a sporadic growth. We should inevitably have lost our disproportionately large share of the world's merchant marine even if we had continued to be the cheapest builders. Our people had no incentive but profits, and when competition became severe, business men betook themselves to more profitable and less hazardous fields.

Being a New Englander and the descendant of a race of shipowners, Mr. Marvin's sympathy has naturally been with the American sailor and shipowner. While he is a believer in government aid to shipping, he realizes that success on the sea as on land must be won by superior excellence.

The second work under review is written by a man who has been enthusiastically interested in American shipping for many years, and is the author of much literature on the subject. The present volume is similar in scope and treatment to his earlier volume called *The American Marine*. The author gives much new material, but no new thought. He uses the same old arguments, and they have not improved perceptibly with age. His enthusiasm frequently leads him into extravagance, as when he says: "It will probably take another war to clean the country again of foreigners, so that an American marine shall once more have preference for employment" (p. 267). His faith in protectionism is such that it does not occur to him to attribute our growth to any other cause, while only the removal of "protection" caused the decline of our shipping. He argues that the only way to revive American shipping is by means of discriminative duties on ships of foreign nations. If such duties are contrary to commercial treaties, then the treaties must go. The treaties must go anyhow, for they grant reciprocal privileges, and reciprocity is an intolerable thing. "Protection is a natural and positive law of life, while Reciprocity is an artificial substitute that

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may produce death." He does not at all consider the absolute certainty that foreign governments would retaliate for any discriminations we might be unwise enough to make.

The author is violently partisan, yet his book contains much valuable material, the result of his extensive labors; and some of his reasoning is decidedly good. For example, he is unalterably opposed to the Frye Bill and to all other schemes for giving direct payments to the merchant marine. He contends (1) that bounties and subsidies are unconstitutional; (2) that they would cost a fabulous amount if they really accomplished anything; and (3) that they would be utterly useless unless they did cost a fabulous sum. So far as the subsidy is concerned, his arguments are certainly sound. It is to be regretted that his power to analyze the effects of discriminative duties is not equally keen and convincing. For after all, any extra duty levied on foreign tonnage is but a kind of indirect bounty to American shipping, with the added disadvantage that foreign nations are more likely to retaliate against discriminations than they are against direct bounties which result in making over a portion of the freight as a gift to shippers.

M. Colin's work is divided into three parts, —"L'Outillage," "L'Exploitation" and "Le Personnel." The first part consists of three rather important chapters upon ships, ports and maritime routes respectively. The improvement in ships is briefly outlined, — the application of steam to navigation, the use of iron and, later, steel in construction, the increase in size and speed of vessels, the improvement in engines and boilers. The opinion is expressed that steamers have attained the maximum of speed possible with boilers and engines constructed after present-day models. Some interesting figures are given to show the enormous cost of an increment of speed. The sailing vessel also has attained its maximum efficiency. According to our author a reaction against excessive size and speed has set in. An examination of the ships now building or just launched will, however, hardly confirm this opinion.

The introduction of the turbine engine and petroleum fuel promises great things for the future. Special ships for special purposes have introduced further economies. We now have refrigerator ships, cattle ships, wine ships, fruit ships, tank steamers, *etc.*, all built for special purposes so as to carry the maximum load at minimum cost.

The improvement of harbors has been a necessary consequence of the increased size of ships. Ship canals have given a great impetus to shipping, especially in the case of the Suez Canal. Submarine

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cables the author quite properly includes among the instruments of navigation.

Part II is taken up chiefly with the organization of the industries of shipbuilding and navigation. The author thinks that England's maritime advantage is most largely due to the organization of industry on a large scale. He is among those who hold that "trade follows the flag." The scanty figures by which he supports his faith are, however, not convincing. That the abandonment of a French line to Chile was followed by a decrease in trade between France and Chile does not prove that trade fell off *because* the service was discontinued. The probability is that the service was discontinued because the trade was unprofitable. The mere fact that British ships carry such a large part of the world's commerce shows that trade follows profits regardless of national emblems.

The most important and interesting part of the volume is the chapter on "Political Conditions of Exploitation." It is recognized that protection to the home market and protection to oversea shipping are incompatible, for the former means death to that free exchange which is the life of the latter. Our statesmen who are trying to reconcile the irreconcilable would do well to ponder these words, coming as they do from an earnest defender of government aid to shipping.

The history of shipping legislation would be more valuable to the economist if the author had made a more thorough study of the growth of commerce and shipping in connection with the changes in governmental policy. A fairly complete though rather confused survey of French shipping legislation since 1793 is given. An attempt is made to show the necessity for this legislation in the usual fashion, by trying to prove that French ships would not make profits without subsidies. M. Colin thinks that the law of 1881 was productive of much good in France. He naïvely points to the increase of French shipping from 1881 to 1887, ascribing it all to the beneficent effects of this legislation, and passes on, thinking that he has proven the *bienfaisance* of that law. Probably the law did have something to do with the increase in French shipping; but if it could be shown that the growth was entirely due to the law, it would still be necessary to prove that the result was worth the expense.

We are told that the fatal defect of the law of 1881 was its limitation to six years. In view of the fact that it was succeeded by one which was decidedly worse, we may agree with this view. The law of 1893 provided for the expenditure of enormous sums in bounties,

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with no apparent benefit. M. Colin criticises it severely, not for the very great expenditures for the sailing marine, but for the failure to provide correspondingly large bonuses for the steam marine. He also condemns the suppression of the half bounty on foreign ships purchased by Frenchmen.

His treatment of shipping legislation in other countries is brief and not specially praiseworthy. Naturally England comes in for the largest share of criticism, not always marked by carefulness in statement of facts. The chapter on the legal status of shipping is full of useful information and pointed criticism. The work on the whole is a valuable compilation on this absorbing subject.

COLUMBIA UNIVERSITY. ROYAL MEEKER.

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BOOK NOTES.

THE recent formation of an International Association for Labor Legislation, with a permanent bureau under the direction of Professor Stephan Bauer at Basle, has brought into the realm of international coöperation another nineteenth century movement. The comparative study of labor laws which has been undertaken by this new bureau will be promoted by several compilations of existing regulations, such as that made for the late Industrial Commission by F. J. Stimson on the basis of Mr. Willoughby's studies in the *Bulletin of the United States Department of Labor*. A more systematic and exhaustive, and for those who read German a more convenient treatise, is a monograph by Dr. J. H. van Zanten of the Amsterdam municipal bureau of statistics; *Die Arbeiterschutzgesetzgebung in den europäischen Ländern* (Jena, Gustav Fischer, 1902; 338 pp.). His analysis is primarily by countries, but he has also given a topical summary in which he brings together the regulations of the various countries upon each subject, and a brief account of the historical development of legislation under the principal topics. The analysis is painstaking and accurate and is arranged with unusual clearness. The publishers have also contributed greatly to the usefulness of the book by careful typographical arrangement, so that it may be regarded as a model work of reference. It may be added that the essay received honorable mention in a contest for a prize offered by the Utrecht Provincial Society for Art and Science.

Every teacher of the industrial history of England has found himself handicapped by the lack of a satisfactory text-book. While it cannot be said that the ideal book has yet been written, Professor Cheyney's *Industrial and Social History of England* (New York, The Macmillan Company, 1901; 317 pp.) is distinctly superior to the familiar text-books on the subject. It is attractive in its general make-up, and presents the material which is most likely to interest the average student. An excellent bibliographical paragraph appended to each chapter enhances its value as a working manual. Possibly a more thoroughgoing discussion of the agrarian situation and of mercantilist policy would have been desirable. But the omissions are certainly not sufficiently important to impair the general usefulness of the work.

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ELECTRONIC REPRODUCTION PROHIBITED

Mr. Price's *English Commerce and Industry* (London, Arnold, 1900; 252 pp.) is a text-book which will probably interest the student less than Professor Cheyney's work; but its clearness and conciseness make it an admirable introduction to economic history.

Students of the labor problem will find some material of interest in the report of the *National Conference on Industrial Conciliation* (The Knickerbocker Press, 1902). Part I contains an account of the National Conference held December 16–17, 1901; Part II consists of papers read before the Chicago Conference, December 17–18, 1900. The first part consists chiefly of effusive expressions of mutual good-will on the part of the representatives of labor and of capital; but the second part is composed of papers of a high order of interest, of which one by Carroll D. Wright on "Trade Conciliation and Arbitration Abroad," and another by E. Dana Durand on "Conciliation and Arbitration in the United States" are especially worthy of mention.

A more important contribution to the literature of the labor movement is M. de Seilhac's *Syndicats Ouvriers* (Paris, Librairie Armand Colin, 1902). Trade unionism in France is of comparatively recent growth, and its history is so closely dependent upon political movements that it is difficult for students of other countries to get a clear notion of it. The tendency of the French workman to rely upon state intervention rather than upon individual initiative is an obstacle to the development of an industrial democracy similar to the English labor organizations. Nevertheless, the ideals and methods of the French bodies appear to approach more nearly to those of the British as the former grow more experienced. Gallic originality appears in numerous phases of the problem. A curious feature is the organization of the "yellows," or non-union element, to resist the tyranny of organized labor. For a foreign reader the interest of the work is somewhat impaired by a detailed account of the parliamentary history of the various laws bearing upon the labor problem.

A second edition of Professor Émile Durkheim's *De la division du travail social* (Paris, Félix Alcan, 1902) contains a preface of thirty-six pages devoted to a discussion of corporations and labor organizations. The general conclusion that M. Durkheim presents as the result of what has evidently been a thoughtful study, is in interesting agreement with a view many years ago set forth by Francis Lieber in his work on *Civil Liberty and Self-Government*. It is, in brief, that no nation can maintain itself unless between the state and its individuals there is developed a series of naturally formed social

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groups, each strong for the purposes of its own sphere of action. There is of course nothing in this view itself which is not familiar to all modern students, but it is well to have it emphasized at a time when the corporation and the trades union are both under suspicion and public criticism. M. Durkheim has rendered a service in showing that all legal developments growing out of our modern industrial evolution must frankly recognize the social necessity of these organizations.

Professor Tarde is continually adding to the already long row of volumes which he has contributed to that interesting domain of social psychology, or, as Professor Tarde himself would prefer to call it, inter-psychology, which lies between psychology proper and the political sciences; a domain in which he is probably to be recognized as our most acute and original thinker. In *L'Opinion et la foule* (Paris, Félix Alcan, 1901) he has given us an interesting study of public opinion, on the one hand, and of the crowd, or mob mind, on the other. The distinction rests upon a strictly psychological phenomenon, namely, the difference between the action which minds have upon one another at a distance and communicating through the written word or the printed page, and that which they have upon one another when assembled in the crowd. The one mode of action is necessarily intellectual and thought-provoking; the other as necessarily sensational, emotional, provocative of unreasoning action. Professor Tarde's work is no mere reiteration of this principle in varying forms of expression, but is a careful analysis of specific problems of both public opinion and crowd action.

M. Charles Gomel has continued his authoritative fiscal history of France at the close of the eighteenth century by a volume entitled *Histoire financière de la Législative et de la Convention* (Paris, Guillaumin, 1902). The first volume treats of the years 1792–1793, and is to be followed by a second volume. The work is marked by the same careful detail which has characterized all its predecessors.

Many years ago Mr. William A. Hines published a thin pamphlet on *American Communistic Experiments*. Messrs. Charles H. Kerr & Co. of Chicago have now published a revised edition of the work enlarged to 433 pages. In its present form it will be a valuable addition to the classic book of Noyes on *American Socialism*. Mr. Hines has not lost faith in the principle of communism, although he warns against the hasty and premature adoption of the scheme. He finds the most successful realization of the ideals of communism in the Amana communities.

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A new edition of the famous *Dialogus de Scaccario*, or *Treatise on the Exchequer*, written by Richard, the Treasurer of England for almost forty years during the twelfth century, has been printed at the Clarendon Press, Oxford, under the editorship of Messrs. Arthur Hughes, C. G. Crump and C. Johnson. This will be warmly welcomed by students of fiscal administration, not only because of the care taken with the text, but also because the editors have added an interesting introduction, as well as a series of notes which throw much light on some of the obscure parts of the text. These notes alone occupy almost half the volume.

Mr. Andrew McFarland Davis, whose volumes on currency and banking were recently published by the American Economic Association, has collected in a volume some of the rarer and more interesting tracts which he utilized for his history. The book is entitled *Tracts relating to the Currency of the Massachusetts Bay* (Boston, Houghton, Mifflin & Co., 1902; 394 pp.). The volume is handsomely gotten up and includes photographic reprints of the title-page of each pamphlet. Mr. Davis has reserved for a possible future volume the tracts of the second period, subsequent to 1720. It is to be hoped that he may see his way to publish this companion volume before long, as several of the tracts are so rare that only a single copy is known to exist. To the student of American economics the volume of Mr. Davis will be as valuable as were in their time the reprints of Lord Overstone for the student of English economics.

The fifth and sixth volumes of Rogers' *History of Agriculture and Prices*, bringing the account down to the year 1702, were published in 1887. In the three remaining years of his life Professor Rogers was engaged in collecting material for the concluding part of his great work. At his death, however, the work was in a very incomplete state. One of his sons, Mr. Arthur G. L. Rogers, took up the investigation, and has just issued the result in a seventh volume, divided into two parts, and covering the period from 1702 to 1793 (Oxford, The Clarendon Press, 8vo; 966 pp.). His independent studies during the last twelve years enabled him to unearth most interesting figures, not only from college accounts in Oxford and Cambridge, but from various printed sources, as well as from the records of a family estate in Yorkshire. The second part contains noteworthy entries covering the rates of wages and the prices of the stock of the South Sea Company, the Bank of England, the East India Company and the government issues. Mr. Rogers has modestly refrained

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from any attempt to comment on these collections. It may be said, however, that his labors in concluding this monumental work have earned for him the gratitude of all students of economic history, and we trust that he may yet be prevailed upon to write a commentary on the figures of a century so important in the history of economic transitions.

Among the younger Frenchmen who have been winning laurels in the investigation of the economic history of their own country, M. Germain Martin takes a high rank. After spending several years in the study of detailed industries, he published in 1896 and the two ensuing years monographs on the guilds of Vellay, the paper industry of Annonay and the weaving school of Chavaignac in the seventeenth and eighteenth centuries. These prepared the way for four important works which have appeared during the past three years, dealing respectively with the great industry under Louis XIV, the great industry under Louis XV, the labor associations in the seventeenth century and the industry and commerce of Vellay in the seventeenth and eighteenth centuries. Not the least welcome of his works is the short but excellent *Bibliographie critique de l'histoire de l'industrie en France*, which includes documentary sources, contemporary writings and modern publications. M. Martin has recently spent several months in this country, and when he returns, as it is his intention to do before long, it is to be hoped that the American student will be more familiar with the writings of this gifted and erudite economic historian.

The Report of Proceedings at the Fifth Congress of the International Coöperative Alliance held at Manchester, July 21–25, 1902, throws an interesting light on the progress of the coöperative movement. Like the previous congresses this one was attended by representatives from all parts of Europe, including even Russia, Spain and Servia, and from Canada, Australia, India and the United States. The principal features of the program were reports from the different countries on the progress of coöperation and profit-sharing, and the International Coöperative Exhibition, at which coöperative products from all parts of the world were exposed for sale. Even to those who have followed the growth of coöperation in Great Britain, the latest figures must seem striking. At the end of 1901 there were in that country over 1600 separate societies, with a total membership just short of 2,000,000; the capital invested amounted to nearly £25,000,000, the sales to over £80,000,000 and the profits to over £9,000,000. Even productive coöperation,

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which is usually characterized as a failure, makes a fair showing. There were 138 productive coöperative societies with a membership of over 22,000, employing nearly £3,000,000 capital, selling products worth £7,000,000 and earning £340,000 profit. The showing for other countries is much less favorable. At the very bottom of the list stands the United States, whose coöperative enterprises are still confined to a few stores, creameries and mutual insurance companies. Even more striking than the figures in regard to the progress of productive coöperation was the exhibit of coöperative products. This indicated that nearly every kind of product which enters into the consumption of the ordinary family is now produced, in some part of the world, on the coöperative plan.

Professor Laband's monograph, *Staatsrecht des deutschen Reiches*, originally published in Marquardsen's *Handbuch des oeffentlichen Rechts*, has just appeared separately in a third and revised edition (Tübingen and Leipzig, J. C. B. Mohr, 1902). Previous notices in the QUARTERLY of this famous work make it unnecessary to repeat here what has been said of it. An examination of the new edition shows that no changes of importance have been made in the scope or character of the work. The footnotes, however, furnish abundant evidence that the author has made use of the recent scientific literature on the subject and has kept up with the new legislation and administration, thus bringing his treatise down to date in the most careful manner. Its great value to students of public law has consequently been increased, and its appearance as a separate publication brings it within easy reach of many who are not able to purchase the larger work.

Bishop Potter's *The Citizen in his Relation to the Industrial Situation* (Charles Scribner's Sons, 1902) consists in a series of lectures delivered at Yale University. These lectures maintain throughout a sustained elevation of moral tone; they are generous with sympathy for every better social and industrial ideal; they show a genuinely democratic spirit, as well as a certain admirable sensitiveness to the newness and gravity of the problems which we class loosely under the term "social question." In the author's answers to the more serious issues, he does not fall back solely upon the commonplaces of "good character," but deals boldly and in detail with industrial and political conditions that enter into the making of good character. An admirable chapter on the citizen as consumer will call forth much gratitude from the Consumers' League.

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